D. Dis 960/54

Sent to Bangalore.

PLP

10/12/58

Sl. No. 8.

Code of Civil Procedure.

Brief context:-

xx xx xx xx

Question:- Whether a suit can be filed for the recovery of possession of inam lands in Hindupur Taluk stated to have been alienated unauthorisedly by Swamiji of B. Mutt?

Opinion:- A Head of Mutt is incompetent to create an ~~xxxxxx~~ interest in respect of the property of the Mutt beyond his life time, i.e., the tenure of his office. Adverse possession of such a property commences when the Head of the Mutt who has disposed of the said property ceases to be a Head of the Mutt by death or otherwise. As the Swamiji of the Mutt has resigned, the successor, if already appointed, may have to ~~xxxx~~ file a suit for possession of immovable property of the said endowment transferred by his predecessor for valuable consideration, within 12 years from the date of resignation in pursuance of section 134A of the Indian Limitation Act. A suit may also be filed by the persons interested in the endowment to set aside the transfer of such immovable property, within the period of limitation specified in section 134-A of the Indian Limitation Act. In case the Government is in the management of the Mutt, a suit can now be filed as the purchaser's interest has come to an end with the date of resignation of Swamiji.

By: Additional Law Secretary.

File No. RD 31 DHR 1958 of the Revenue Department.

Diary No. 5276/Law I. Law Department.

5276/Law I

Mysore Government Secretariat

File No. RD 31 DHR of 1958.

[App. F. III 2

Serial No.	
	Unauthorised alienation of lands situated in Hindupur Taluk belonging to Sri Balakrishnan Mutt.
1.	The Mysore Religions and Charitable Endowments ~~Inams~~ is not applicable to Inamlands in Hindupur Taluk.
2.	The details regarding alienations of ~~Sat~~ lands: ~~State~~ ~~to~~ have been made by Ex-Swamiji are indicated in page 34 of the Correspondence
3.	The Case Law ~~on~~ the subject referred to ~~be~~ by the Revenue Secretary in his note at para 52 appears to be Yellappa Vs. Sri Gurusidda Desikendra Swamigalu of Thippesetty Mutt (45 Mys H.C.R 63; 18 Mys L.J. 429). Wherein it is observed as follows
	"The Swami of Mutt was not a trustee but a manager, Custodian, procurator or something akin to it except in respect of property specifically entrusted to him for a particular purpose and that he could not create an interest beyond his life-time".
4.	In the circumstance it appears that recourse shall have to be taken to file a suit ~~to~~ as suggested by the Revenue Secretary
	3/10/59

Note.—Contn. Sheet

Serial No.

Since the property alienated is situated within the limits of Mysore state, recourse to the civil alienation under the Mysore H.R.&C. Act cannot be taken. It is not clear whether there is a similar provision as in S. 30 of the Mys. H.R. Act in Madras. If not a suit may be filed for a declaration that the alienations are bad and for possession. Since the Swamiji who alienated the property is now resigned and has ceased to be in office, a suit can be brought against the purchasers now either by the present Swamiji (if he has been installed) or by some one as the manager of the family. In the case of alienations by Swamiji, adverse possession starts from the time of the death of Swamiji or his ceasing to be in office (vide 60 IA 124 and 62 IA 47) Mulla's Hindu Law 9th ed 532 11th Ed) It means therefore that the alienations can be challenged after the Swamiji has ceased to be in office. It is not necessary to wait till his death

W. Ambedkar

5.11.59

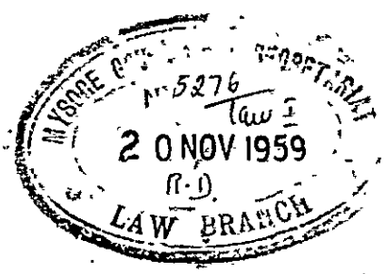
ADDITIONAL SECRETARY TO GOVERNMENT
No. 3355
6 OCT 1959

WD 04700—GPB—PZS—8,00,000—1958

LAW DEPARTMENT

According to the well-settled principles of Hindu law, a Mahant or a Head of a Math is incompetent to create any interest in respect of Math property to endure beyond his life time. In the case of a Mahant/life time necessarily will have a limited meaning. Such period will have relation to the tenure of his office with the result "that adverse possession of that particular property will commence when the Mahant who has disposed of it ceases to be a Mahant by death or otherwise". This is clear from Article 134-B of the Indian Limitation Act which provides for a suit to recover possession of immovable property comprised in a Hindu, Mohammedan or Buddhist endowment and transferred by the previous Manager for valuable consideration. In such a case, the succeeding Manager has to bring a suit within 12 years from the date of "the death, resignation or removal of the transferor". In this case, it appears that the Swami has already resigned. If the successor had been appointed, he will have to file a suit for possession within 12 years from the date of his resignation. If, on the other hand, the suit is intended merely to set aside the transfer of such immovable property by persons interested in the endowment, then such suit would be governed by Article 134-A under which the period of limitation begins to run from the

date "when the transfer becomesknown to the plaintiff" Article 134-A does not contemplate a suit for possession, as the nature of the suit itself is only for avoiding the transfer by persons who are not themselves entitled to be put in possession. If the Government is in the management of the Math, a suit can now be filed as the purchaser's interest has come to an end with the date of the resignation of the Swami.



(T.K. Tukol)
Addl. Law Secretary.
(18-11-1959)

R.D.)

Sl.No.7.

Madras Hindu Religious and Charitable Endowments Act, 1951. Section 77 & 88

Brief context:-

xx xx xx

Question:- How the final liability regarding the recovery of costs is to be fixed in pursuance of the orders of Courts under the provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951 in:-

(i) cases in which parties are directed to bear the costs; and

(ii) cases where the Government is directed to pay the costs of a party?

Opinion:- In view of the provisions in section 77 and 88 of the Act, which govern the procedure of recovery in such cases, the right of the Government, the Commissioner or the Deputy Commissioner or the Area Committee or an Assistant Commissioner to be paid out of the funds of the institution could be enforced where an order of costs in any proceeding does not lay the burden of costs personally on an officer or where a right to reimbursement is not negatived in express terms by the terms of the decree.

Where the right to recover from the funds of the institution is granted by the terms of the decree, the Government or the Commissioner or his subordinate will have either to execute the decree through a Civil Court if it is the order of the Civil Court in an execution proceeding or a notice has to be issued as provided in section 77(a) of the Act and ~~send~~ sent a requisition thereafter to the Collector.

By: Additional Law Secretary.

File No. RD 16 MAP 59 Revenue-
2) RD 6 MPL 58. Department.

89.

Diary No. (1) 3496/Law I and (2) 4317/Law I. Law Department.

7.

3496 Rent 4317

Mysore Government Secretariat

RJ File No. 6 MPL of 1958. [App. F. III 2

Serial No.	
	Revision petition of H.H. Sri. Vidyavaradha Theertha Swamiyar of Sri. Krishnapur Matha - Udipi.
	For facts of the Case kindly see the revision petition at P. 1-c.f. and the Decree of the High Court of Madras dated 8-8-1952 (P. 37(a)) The Decree in Question has awarded costs to both the Appellant & Respondents viz. Sri Vidyavaradha Theertha Swamiyar of Krishnapur Matt & the Hindu religious Endowments Board etc. respectively. Now the Commr. in his letter dated 6-3-59 at P. 41-c.f. has differentiated between the claims recovable under section 77 & 88 of the M.D.H.-R. & C.E. Act. 1951. He says that the Costs recovable under Sec 88 of the Act are to be recovered by an execution petition through the Court & the Costs under Section 77 are recoverable as arrears of L.R. Hence the Question of limitation

Note.—Contn. Sheet

Serial No.

under the Limitation Act is applicable in the former case and not in the latter case.

Sec. 88 of the Act states that The Costs, Charges and expenses of and incidental to any suit appeal or application to a court under this Act shall be in the discretion of the court, which may subject to the provisions of Sec 77, direct the whole or any part of such Costs, Charges and expenses to be met from the property or income of ..... or to be borne and paid in such manner and by such persons as it thinks fit. Sec 77 states that all costs charges etc. ... incurred by the Govt the Commr, a Deputy Commr etc. as a party to or in connection with any legal proceedings shall be payable out of the funds of such institution. Sec 78 lays down the procedure of the recovery of the costs

WD 04700—GPB—PZS—8,00,000—1958

Serial No.

and expenses recoverable under Sec 76 & 77. And the costs, expenses so recoverable are to be assessed and notified to the trustee of the religious institution concerned in the prescribed manner.

The petitioner in his petition says that the costs awarded by the High court of Madras in 1952 cannot be recovered under Sec 77 & 78. as these sections had no application to the facts and that was the reason why the Comm. H.R. & C.E. Madras, did not make any demand. The decree awarded by the High court of Madras (P.37.(a)) does not direct the manner in which the costs so awarded are to be paid, as contemplated in Sec. 88 of the Act. Nor it is known from the records whether any execution proceedings were taken out in pursuance of that decree. It is also not made clear why no action was taken since the date of the

Note.—Contn. Sheet

3496 Lawf

File No. RDGMP2 of 1958.

Mysore Government' Secretariat

Serial No.

decree in 1952 till 1958 when a notice & demand was issued to the party under Sec. 78. In the absence of this information it may not be possible to examine the points in Question. If at all any action is proposed to be taken Sec 88 has to be invoked and not Sec 77 or 78. In that case the claim would be time barred under article 182 of the Limitation Act

5/8/58

WD 04700—GPB—PZS—8,00,000—1958

Serial No.	
	H.H. Sri Vidyaratnathirtha Swamy of Krishnapur Mutt, Udipi had filed an appeal in the High Court of Madras against the Hindu Religious Endowment Board represented by the Commissioner for H.R. & C.E. and one Sri Aroor Krishnamurthy Rao. The appeal was allowed with certain modifications and the court directed that the appellant-plaintiff (Swamiji) do from out of the Mutt funds pay himself Rs.1,628-10-6 for his costs of the appeal and do also pay the first respondent (Commissioner for H.R. & C.E.) Rs.1806-14-0 and to the second respondent Rs.153/-. This order was made in the year 1952. The question now is whether the first respondent can recover the costs under the decree. It appears that he issued a notice to the appellant under section78 of the H.R. & C.E. Act and it was opposed. Now, it has been provided under the said Act in section 77 that all costs, charges and expenses incurred by the Government, the Commissioner etc. as a party to or in connection with any legal proceeding in respect of any religious institution, shall be payable out of the funds of such institution except in cases where a liability to pay the same has been laid on any party or other person personally and the right to re-imbursement under this section has been negatived in express terms. Under section 88 of the said Act it has been provided that the costs, charges and expenses of any suit, appeal or application under the Act shall be in the ds discretion of the court which may, subject to the provisions of section 77, direct the whole or any part of such costs, charges and expenses to be met from the property or income of the religious institution. It will thus appear that the

Note.—Contn. Sheet

Serial No.

Commissioner cannot now execute the decree inasmuch as there would be a bar of limitation since the decree was passed in the year 1952. The question now is whether he can recover the costs as an arr ear of land revenue under section 78 of the said Act. It may be noted that although the remedy by way of executing the decree may be barred, yet there is another remedy provided by section 78 of the Act under which it has been provided that if the trustee fails to pay the amount after notice the Collector of the district in which the property of the institution is situated shall recover such amount as if it were an arrear of land revenue. It appears that under section 79 prescribes the period for levying any contribution to be recovered under section 78. That period has been prescribed as three faslis immediately preceding the fasli in which a notice of assessment is issued under section 78. Hence, it appears that the recovery in this case cannot be made as the contribution relates to a period beyond three years from the date of notice. In my opinion, section 77 and section 88 are complementary to each other and orders under section 88 regarding costs are to be passed subject to the provisions of section 77. In this case, there is no difficulty in interpreting the provisions of the decree. The decree has specifically directed that the amount shall be payable by the plaintiff out of the funds of the institution. But the question of limitation is there both under the Indian Limitation Act and under section 79 of the said Act.

With reference to the letter of the Commissioner of Endowments dated 16-7-1959 it may be pointed out

WD 04700—GPB—PZS—8,00,000—1958

Serial No.

that there is no scope for different interpretations of sections 77 and 88. There are two remedies open to recover the costs awarded by the decree, or in the absence of any specific provision in the decree, to be recovered by the Government or the Commissioner. One is to recover the costs etc. as arrears of land revenue under section 78 in which case the limitation is three faslis as provided in section 79 and the other remedy is by executing the decree provided the decree has awarded the costs. Hence, I do not see any difficulty as envisaged in the letter cited above. In the absence of any specific provision in the decree the Government can re-imburse the costs under the provisions of section 77 provided the claim is made within three years.

ADDITIONAL 28 WS 28 AUG 1959 Law Dept. Bangalore

A.L.S.)

(W.V. Arbatti)
Under Secy.Law I
25-8-1959.

C. F. 74]

4350/Govt

Routine Note.

16 DELHI ST

[To be used only for notes, requisitions, etc., not intended for permanent record]

WD 01785—GPB—50,000—22-8-58

MYSORE GOVERNMENT SECRETARIAT
No. 4317
Govt
10 AUG 1959
BNR
LAW BRANCH

Re. BNR

Pl check up the relevancy.

8/8

Subject
Law - I

3674
NOV 1959
LAW DEPARTMENT

Section 77 of the Madras Hindu Religious and Charitable Endowments Act 1951 is specific that "except in cases where liability to pay the expenses has been laid on any party or other person personally and the right to reimbursement under the said Section has been negatived in express terms", the expenses incurred in connection with the legal proceedings in respect of the institution have to be paid out of the funds of such institution. Hence unless the right to reimbursement has been negatived in express terms in the order, the parties to bear their own costs" permits reimbursement of the amount from funds of the Institution

(The file referred to has been submitted to SE/SEO on 5/8/59)

12 14/8/59

Subject
Law - I

4/11

Re: may be referred to law - on the question re: ID matters are being dealt with in that Section.

Subject
Law - I

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

Law Department.

The Commissioner for Charitable Endowments has sought for an interpretation of section 77 of the Madras Religious and Charitable Endowments Act with particular reference to orders of the Civil

Courts as regards the recovery of costs. He has made specific mention of two types of cases:

i) Cases in which parties are directed to bear the costs; and

ii) Cases where the Government is directed to pay the costs of a party,

as for example the order of the Supreme Court in C.A.38/58 relating to Shirur Mutt.

In my opinion, section 77 is very clear and need not create any difficulties in fixing the final liability. The relevant part of the section lays down that all costs, charges and expenses incurred by the Government, the Commissioner, etc. as a party to or in connection with any legal proceeding in respect of any religious institution shall be payable out of the funds of such institution. This is the substantial part of the section which lays down a general rule that all costs, charges and expenses incurred by the Government and other officers mentioned therein in connection with any legal proceeding as a party or in connection with any religious institution shall normally be payable out of the funds of such institution. While this is the normal rule, the latter part of the section contains an exception which reads thus:

> "Except in cases where a liability to pay the same has been laid on any party or other person <u>personally and the right to reimbursement under this section has been negatived in express terms.</u>"

So, reading the section as a whole, it follows that whenever the Government or any of the officers mentioned in the section has incurred any expenditure

in respect of a legal proceeding or religious institution, such costs shall be payable out of the funds of the institution. The first exception to this rule is that where the liability to pay the same has been laid on any party or other person personally meaning thereby that the liability for payment of costs shall be personal. It is only in such cases that the officer shall be entitled to recover the costs and expenses from the funds of the institution. It may be noted that it is only in cases where the expenses have been held to be malafide or frivolous that the court saddles an officer to bear such expenses personally. Cases of this kind are rare and yet the section lays down that where there are such cases, viz. where there is a direction that an officer or other person shall bear the costs personally, the right given by the general rule of reimbursement from the funds of the institution shall be denied to him. The second exception to the rule is where the right to reimbursement under this section has been negatived in express terms. So, where an order requires the parties to bear the costs, there is neither a direction requiring an officer to bear the costs personally nor is the general right conferred by the section negatived in express terms. Similarly, where the order directs the Government to pay the costs, its right of reimbursement still remains unless it is negatived in express terms by the terms of the decree. In this connection, it may be advantageous to refer to section 88, which provides for the various orders to be passed in respect of costs in proceedings either before courts or before the Commissioner or his subordinate officers. They are required to pass orders "subject

to the provisions of section 77." Reading the two sections together, it would follow that where an order of costs e in any proceeding does not lay the burden of costs personally on an officer or where a right to reimbursement is not negatived in express terms by the terms of the decree, the ag right of the Government, the Commissioner or the Deputy Commissioner or the Area Committee or the Assistant Commissioner to be paid out of the funds of the institution remains in tact.

Where the right to recover from the funds of the institution is granted by the terms of the decree, then two remedies will be opon to the Government or the Commissioner or his subordinates. The first remedy is to execute the decree through a Civil Court if it is the order of the Civil Court in an execution proceeding. The second remedy is provided by section 77(a) by issuing a notice and thereupon sending a requisition to the Collector.

Linked with RD 6 MPL 58
D. No: 3496/Law I-1

Rev. Dept.)

(T.K. Tukol)
Addl. Law Secretary.
3-11-1959.

Sl.No.6.

States Re-organisation Act, 1956. Section 91 and 109.

Brief context:-

xx xx xx xx

Question:- Whether the surplus of the administration fund vested in the Commissioner under the Madras Hindu Religious and Charitable Endowments Act, 1951 is to be distributed between the Government of Madras, Kerala and Mysore under section 91 of the States Re-organisation Act or section 109 of the Act.

Opinion:- With the inclusion of the Madras Hindu Religious and Charitable Endowments Act, 1951 in the Schedule to the Inter State Corporation Act, 1957, by the Notification No.G.S.R.1075 dated 15-9-1959 of the Ministry of Home Affairs, Government of India, the Commissioner under the said Act was an Inter State Copporation for the purposes of the Inter State Corporation Act and as such the Government of Madras, Kerala and Mysore have to approach the Central Government with an approved scheme as contemplated by section 3 of the said Act for an order under section 4(2) of the said Act to apportion the assets and liabilities of the Commissioner who is a Corporation sole under sec.80 of the Madras Hindu Religious and Charitable Endowments Act, 1951. This being a matter of agreement between different Governments concerned, the views of the Governments of Madras, and Kerala have to be ascertained.

By: Additional Law Secretary.

File No. RD 15 MZD 59 of the Revenue Department.

Diary No. 3856/Law I of 1959. Law Department.

Mysore Government Secretariat

3857/a.i.-2) 75 M2 1) 55

File No. of 195 .

[App. F. III 2

Serial No.	
	The point at issue between the Government of Madras and Kerala is about the distribution of surplus of the administration fund vested in the Commissioner, H.R.&.C.E., Madras as corporation sole under Section 80 of the Madras H.R.&.C.E. (Amendment) Act 1954. The Government of Madras is of the view that the matter falls under Section 91 of the S.R.Act and it could be share as agreed to between all the successor ~~xx~~ States before October 1957 or in default of such agreement as the Central Government may by order direct. The contention of Government of Kerala is that Section 91 is not applicable in this case since the assets are not those of the State but those belonging to the corporation. And as such Section 109 of the S.R.Act is ~~provisioreal~~ applicable to the Statutory Corporations though it does not specifically referred to allocation of funds or assets it is within the competence of the Central Government to ~~xx~~ issue directions in this behalf. The Government of India have observed that if the commissioner in ~~xx~~whom~~x~~ the funds vests has been declared by the Corporation sole with perpetual succession under the provisions of the Madras H.R.C.E. Act, 1954 then ~~thxx~~ corporate body became Inter State Corporation consequent on the re-organisation of the States, and therefore it will be necessary to prepare a scheme for the re-organisation of the corporation under the Section of the Inter State Corporation Act, 1957.
	In view of the stand taken by the Gov rnment of Kerala a draft letter proposed ~~xx~~ to be issued to ~~xx~~ the Government of India requesting ~~the~~ frame a scheme under ~~the~~ Section (5) of the Inter State Corporation Act. 1957. Law Department opinion has been

Note.—Contn. Sheet

RD 15 M2D-57

File No. of 195 .. | Mysore Government Secretariat

Serial No.

sought with reference to para 28 in the linked file No.7 SEP 57, vide Flag 'C', Priveously it was opinioned by this Department that the H.R.C.E. Act, 1951 does not constitute the Commissioner as a Corporation sole. While regarding this opinion the amendment affected in 1954 was not in view. In the light of the amendment act 1954, the Commissioner has been declared to be a Corporation Sole with perpetual succession. However, since the Commissioner has been declared to be a Corporation sole thus Corporate body became Inter State Corporation consequent on the re-organisation of the States. The Legal position explained in the Government of India's letter at page 3, is correct, But in this unless the H.R.C.E. Act, 1951 is included in the schedule to the Inter State Corporation Act, 1955 by notification under Section 5 of the act it will not be possible to frame the scheme under Section 3 of the Inter State Corporation Act, Therefore the Government of India will have to be addressed to include the act in the schedule of Inter State Corporation, In the first instance, so that the Government may frame scheme for re-constitution or dis-solving the board 24/9/57

24/9/57

24/9/57

3856/Law/57

22/11/57

The Commissioner HR & CE Madras is constituted a Corporation Sole with perpetual succession and a common seal under the provisions of Sec 80 of HR&CE Act 1951 (as amended in 1954) Hence the fund vests in the Corporation and not in the State. Consequently

WD 04700—GPB—PZS—8,00,000—1058

Serial No.

Sec 91 SR Act. does not apply to the fund in as much as Sec 91 applies to assets and liabilities of an existing State. A Corporation Sch is a distinct body from the State.

Under Sec 109 of SR Act this Corporation begins to function in the new State But the Corporation Body will not be an inter State Corporation in as much as the Schedule to the Inter State Corporation Act does not include this Act. Hence the Central Govt. may issue a notification under Sec 5 of the Act including this Act in the Schedule and Then proceed to make a Scheme. Besides this it appears that the Central Govt. has general powers of issuing directions to the Corporation

Hence the Central Govt may be requested to frame a Scheme either under Sec 109 SR Act & give directions or to issue notification U/S 5 of Inter State Corporation Act and Thereby make the Commission an Inter State Corporation and either reconstitute or dissolve the Corporation.

7/XI/55

ADDITIONAL SECRETARY TO GOVERNMENT 37u2 9 NOV 1959 LAW DEPARTMENT.

ALS)

Note.—Contn. Sheet

G.O.R. 1075, dated 15-9-1959.
Ministry of Home Affairs - Publication Part II
of Gazette of the Gazette 26-9-59.

LAW DEPARTMENT

The draft letter needs modification.

In view of what is contained in section 80 of the Madras Hindu Religious and Charitable Endowments Act, 1951 as amended by Act No.27 of 1954, the Commissioner of Religious Endowments in Madras is a corporation sole and has a perpetual succession and a common seal. In view of this position, the contention of the

Madras Government that the assets or the liabilities of the Corporation in relation to the new States of Kerala, Madras and Mysore have to be dealt with under section 91 of the States Reorganization Act, 1956, will not be correct; because section 109 of the said Act makes a general provision as regards statutory corporations which even after reorganization continue to function and operate in those areas in respect of which they were functioning or operating immediately before 1-11-1956. The Commissioner of Charitable Endowments, Madras would continue to function as a corporation in the areas of former Madras State subject to such directions as may be issued by the Central Government from time to time until some other provision is made by law in respect of such body.

When the Government of India passed the Inter State Corporations Act, 1957 (Act No.38 of 1957), it specified in the schedules certain acts which created corporations thereunder. In respect of the Inter State Corporations coming under those acts, the respective State Governments were required under section 3 of the said Act to frame schemes either for reconstitution and reorganization of such corporation or for dissolution of the same and forward them to the Central Government. On receipt of a scheme forwarded to it under section 3, the Central Government has to give effect to the scheme subject to such modification as may be introduced in the scheme.

So far as the Madras Hindu Religious and Charitable Endowments Act is concerned, the Act ~~was not~~ has been included in the schedule to the Inter State Corporations Act, 1957 by a notification No. G.S.R. 1075 dated 15-9-1959 with the result, that the provisions regarding the constitution of schemes, etc. will ~~not~~ apply to this Corporation. ~~But section 3~~

Now that the Central Government has included the Act in the Schedule, the State Governments of Kerala, Madras and Mysore will have to prepare an approved scheme as contemplated by section 3 of the Inter State Corporations Act for dissolution of the existing corporation and for the division of the assets, rights and liabilities of the said corporation. The Government of India will have to be approached for an order under sub-section (2) of section 4 of that Act so as to enable the three Governments to apportion the assets and liabilities of the corporation.

3856
4299/Law E

At present, the only course open is for the three Governments to approach the Central Government with a scheme. This is a matter of agreement between the three Governments and a reference to the Central Government could be made after ascertaining the views of the other two Governments.

MYSORE GOVERNMENT SECRETARIAT
4299
Law
18 DEC 1959
R.D.
LAW BRANCH

(T.K. Tukol)
Addl. Law Secretary.
(17-12-1959)

R.D.)

Sl.No.5.

Bombay Public Trusts Act, 1950.
Section 50.

Brief context:-

xx xx xx xx

Question:- Whether the amount obtained by auction of Kalasha at the time of ceremonies of Mahamastakabhisheka (moonda pooja) to the image of Sri Gomateswara at Sravana Belgola, during 1910, 1925 and 1940 and stated to be in the custody of the All India Jain Thirthakshetra Committee at Bombay could be recovered by filing a suit against the said Committee?

Opinion:- The legal status of the All Indian Jain Committee should be ascertained to decide whether a suit should be filed or whether an application is necessary under the appropriate law governing the administration of public religious and charitable trusts.

By: Additional Law Secretary.

File No. RD 81 MZD 1957 of the Revenue Department.

Diary No. 4011/Law I of 1959. Law Department.

40 11 Lands

Mysore Government Secretariat

RD File No. 81 M2D of 1957. [App. F. III 2

Serial No.	
	Utilisation of the Kalasa Collection during the Mahamastakabhisheka ceremonies of Sri. Gomateswara swamy at Sravanabelagola in 1910 → 1925
1	Kindly See Paras 159 166 & 183 of the file notes.
2	At para 159, the Advocate General has stated that the constitution, bye laws etc. of the Bharatavarshiya Digambara Jain Tirtha Kshetra Committee may be obtained before further action is contemplated. As remined at paras 166 & 183, the RD. has now furnished with a copy of the bye laws of the Committee in English (P 287 & 331 cf. re: the rules the Commissioner for endowments reports (P.323) that he could not get a copy of the rules as the same was not available. It seems no efforts have been made to obtain a copy of the rules etc. re: the Constitution of the Committee. The bye laws now translated into English (P 331 cf.) do not

Note.—Contn. Sheet

L/C II Com.2

File No. RD 87 M2D 57 of 195

Mysore Government Secretariat

	Serial No.
It would throw any light on the Constitution of the Committee. Hence it is better to get a Copy of ~~that~~ the same from the Manager of the Bharatavarshiya Digambar Jain Tirtha Kshetra Committee Bombay. ~~to~~ to examine the point in question as desired by the Adv. General at para 159. 28/7.	
The Byelaws and the Subordinate Rules at pages 331 and 335 respectively are forwarded. This may now be referred to Advocate General with reference to para 159	3
Forwarded to Advocate General for favour of opinion. A.V. Achutha 31/8/59 Addl. Govt.	5
W. V. ARBATTI, Under Secy., Law Dept. U.O.T. No. 178/59-60 Dated. 27-10-59	
There is paucity of material to ascertain what exactly were the amounts collected, by whom and with whom the amounts	6

ADVOCATE GENERAL FOR MYSORE U.O.F. 96/59 31/8/59 DY. SECRETARY TO THE GOVT. LAW DEPARTMENT

VD 04700—GPB—PZS—8,00,000—1958

amounts remained. But, there is a telegram addressed to the Dewan Sahib, Mysore, Bangalore by Sir Hukamchand, President, All India Digambar Jain Tirtha, dated 15-4-1944 wherein it is stated that " ..... FUNDS WERE COLLECTED AT THE TIME OF MAHAMASTAKABHISHEK CEREMONIES OF GOMATESHWARASWAMY AT SHRAVANBELGOLA IN 1919 & 1925 STOP THEREFROM ABOUT FIFTEEN THOUSAND RUPEES WERE SPENT THERE IN MAHAMASTAKABHISHEK OF 1915 & 1940 & INCLUDING INTEREST BALANCE OF ABOUT FORTYSEVEN THOUSAND RUPEES REMAINS IN ALL INDIA DIGAMBARA JAIN TIRTHKSHETRA COMMITTEE STOP ...." Thereafter, the telegram proceeds to say that they propose to construct a Dharmashala at Shravanbelgola and that the consent of His Highness the Maharaja may kindly be obtained for laying the foundation-stone, but His Highness was unable to accept the invitation to lay the foundation-stone.

7 I think we may proceed on this admission by the All India Digambar Jain Tirthakshetra Committee that the amount of Rs. 47,000/- and further interest is with the Committee out of the collections made at the time of Mahamastakabhishek ceremonies.

8 A suit would, therefore, lie against the Committee for recovery of this amount to be expended for according facilities to the devotees and for other improvements at Shravanbelgola.

9 The earlier correspondence shows that the Committee was not co-operative in the matter of handing over the funds for the purposes abovementioned, and I see in the file a letter dated 29th September 1939 from the Committee saying that they would be prepared to give between 8 to 10 thousand rupees on condition that it was to be returned from the income that was received in the Mela ~~Mahamastakabhishek~~, but that letter was not specifically in reply to the demand

4011 Lms

demand made by the Committee but in reply to an invitation to attend a meeting arranged for the purposes of Mahamastakabhishek. The suit will have to be filed on behalf of the deity or the institution.

10 The Jain Tirthakshetra Committee are to be treated as trustees for expending the amounts for the benefit of the devotees and improvement of the temple. By virtue of Sec. 10 of the Limitation Act, the claim against the trustees for the property in their hands does not become barred by any length of time. I think also that as the amounts were collected at the time of Mahamastakabhishek ceremonies at Shravanbelgola and for their performance money is being expended there, the Mysore Courts will have jurisdiction, but this matter requires further investigation.

11 I would suggest that the Government Pleader, Mysore may be requested to prepare a comprehensive notice putting forth the claim and, if necessary, discuss the draft notice with me.

12 I would also suggest that, as the telegram of 15-2-1944 constitutes a very valuable piece of evidence that the amount is lying with the Committee, a photostat copy, size to size, may be got prepared and retained in the Secretariat. It is hardly necessary to say that the original also must be carefully preserved as I feel in the set of papers available in the file that this telegram may be the main piece of evidence on which reliance can be placed in any suit for recovery.

G.R. Ethirajulu Naidu

(G.R.Ethirajulu Naidu)
Advocate General.

Tn.

Serial No.	
13.	File re-submitted after its return from Adv. General with his opinion

28/X

The history of this case has been given in detail at pages 35 ~~and~~ 40 C.F. It appears that in 1830 the then Maharaja of Mysore granted ~~religious~~ villages of Shravanabelagola, Uttanhalli and Hoshalli as inams to Jain muts at Belgola for maintaining of 33 temples therein. During 1910 a ceremony Mahamastakabhisekha or the Munda-pooja was performed. The right to perform the first pooja ~~of~~ or abhisekha to the immage of Sri Gommateswara, with kalashas filled with holy water, were sold by auction and the highest bid was Rupees 16m (Sixteen thousand). This amount was left in the custody of late Seth Makanchanji of Bombay who was a member of the All India Jain Thirthakshetra Committee. The ceremony of Munda-pooja was repeated again in 1925. An amount of Rupees Thirtyone thousand (31m) was recovered by auction of the kalasha. This amount was also allowed to be left in the custody of the Treasurer of the Committee, one Seth Sukhananda Gurumukha Rai. A portion of the collection of 1910 was utilised in connection with the 1925 ceremony. This amount was intended to utilise towards the construction of a bridge at Mandagere across the Hemavathi river. But

this proposal was abandoned. The ~~matter~~ remained with the All India Committee at Bombay and the question is how this amount can be recovered by the Jain Committee at Shravanabelagola. It may be stated here that the management of this temple and the property has been taken over by the Government since a long time as can be seen from the extracts of the orders detailed at pages 38 and 39. As advised by the Government Pleader in 1939, a letter was addressed to Sir Hukum Chand who was the President of the All India Committee. To this letter the Secretary of the Committee, R.C. Jhaweri gave an evasive reply. Another letter was addressed to the Secretary to which Sri Jhaweri replied that the money ~~has~~ had to be recovered from the wife of late Seth Sukhanandaji by a suit which was filed in the High Court of Bombay and after recovery of the amount, it would be used for creating facilities at Shravanabelagola by construction of a Dharmashala. It may be stated here that Sir Hukumchand, the President of the All India Jain Committee was appointed as a member of Shravanabelagola Gomateswaraswamy Fund in 1942. Sir Hukumchand replied that the matter would be ~~placed before the Committee. To a subsequent letter~~ he replied that a major portion of the kalasha collections of 1910 ~~had~~ was spent in connection with the two subsequent ceremonies of 1925 and 1940. That the collections of 1925 amounted to Rupees Thirtyeight thousand which had to be recovered from the wife of the

contd...

WD 04700—GPB—PZS—8,00,000—1958

Serial No.

late Treasurer Sukhanandaji. In a recent telegram sent by Sir Hukumchand, it has been stated that a sum of Rupees Fortyseven thousand is available.

Now the question is whether a suit suit can be filed. There is no other material except the telegram which constituted an imported piece of document by the President of the All India Jain Committee and the correspondence between the Government and the Secretary to the All India Jain Committee Sri Jhaweri. It is possible that a suit ~~could~~ can be based on this material, as opined by the Advocate General. I think the suit would not be barred by limitation in as much as the amount would in the form of a deposit or it would be a suit against the Trustee who have failed to carry out the purposes of the Trust The Advocate General has expressed doubts as to the form in which the suit has to be filed. The cause of action has taken place within the jurisdiction of the Mysore Court. However the defendents reside in Bombay, it is possible that a suit may be filed in the Mysore Court. As suggested by the Advocate General the Government Pleader, Mysore may be asked to draft a notice and await a reply thereto and then take a further decision for the filing of the suit. The most important piece of document is the telegram sent by Sir Hukumchand and it is necessary that this document is kept in safe custody.

ADDITIONAL SECRETARY TO GOVT. No 3760 10 NOV 1959 RTD.

6/xi/59

ALS)

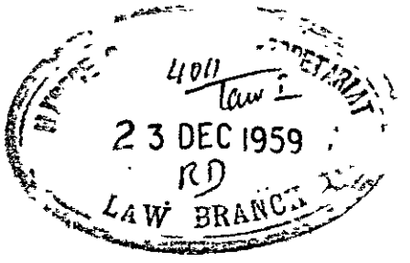
Note.—Contn. Sheet

ABS 17/9/61

LAW DEPARTMENT

The note of the Advocate General may be seen (Flag S). It appears from the papers that the All India Jain Tirthakshetra Committee, Bombay, is a registered Body with a power of management over all the pilgrim centres in the whole of India. A copy of its constitution in Hindi with its translation in English is available. It is purely a communal organization intended to manage communal pilgrim centres. It has its head office in Bombay. It has been mentioned that the Institution was registered on 24-11-1930. It is not clear whether it was registered under the Indian Societies Registration Act, 1860 or any other Act. It should be ascertained under what law it has been registered. It is also possible that this Body which is a trust of/~~the~~ all ~~Ak~~ the Jains residing in India must have been registered under the Bombay Public Trusts Act, 1950, as its Head Office is situated in Bombay. If the legal status of this Institution is ascertaine

then it would be possible to decide as to whether a suit should be filed or an application could be made under the relevant Act.



(T.K. Tukol)
Addl. Law Secretary.
(22-12-1959)

R.D.)

Extract from the Digest of Opinions
Page No.11 - Item No.55.

55. Under condition I of the licence granted to Messrs. Walchandnagar Industries Ltd., for the manufacture of rectified spirit it was provided that the licence "shall be renewable".

Question - Whether licence is renewable at the option of Government.

Held, that the works "shall be renewable " in the licence mean shall be renewable at the option of the licensee and not of Government and that the decision of the Bombay High Court reported in 50 B.L.R. 574, has not application to the present case.

Held, further that if sub-clause (1) of clause 54 of the Prohibition Bill is suitably amended providing for power of cancellation of licences granted previously, it would be possible for Government to cancel the licence in such a case, but the licensee will have to be given compensation.

R.L.A.'s No.1241, dated the 2nd September 1949, File O. Abk./49.

Sub: Compilation of Digest of opinion recorded by the Law Department - Sanction of Special pay.

PROCEEDINGS OF THE GOVERNMENT OF MYSORE.

ORDER NO. GAD 58 ASA 61.

BANGALORE, DATED THE 9TH FEBRUARY 1961.

It is considered necessary to compile the opinions recorded by the Law Department on files so that such a compilation may serve as a guide in similar cases both to the Law Department and other Departments. Sanction is, therefore, accorded to engage five assistants of the Law Department who have formerly worked opinion cases and two typists on this compilation work for a period of three months. Sanction is also accorded to the payment of a special pay of Rs.20/- p.m. to each of the five Assistants and Rs.15/- p.m. to each of the two typists subject to the following conditions:-

(i) The ~~would~~ work should be done without detriment to their normal work, outside the Office hours.

(ii) Each Assistant should compile, on an average, 120 opinions per month and a typist should type, on an average, 240 opinions a month. The Law Department should ensure that this scale of work is turned out by the Assistants and Typist.

The expenditure on this account is debitable to "25. General Administration C. Secretariat - 1. Civil Secretariat 2. Pay of establishment".

By Order and in the Name of the Governor of Mysore.

9/2/61

(Khaja Gulam Cohar Ali Khan.)
Under Secretary to Govt.
GAD. Admn-2.

To: The Accountant-General, Mysore, Bangalore, through Deptl.
The Secretary to Government, Law Deptt.

Copy to: The Under Secy to Govt. GAD(Accts).
The Supdt. -do-
The Under Secy to Govt. Law Deptt.
The Supdt. -do-
The Regr-2 for Weekly Gazette (3 copy)

BSG.

Subject:- Compilation of digest of opinion recorded by the Law Department - Sanction of Special pay.

Reference:- G.O. No.GAD 58 ASA 61, dated 9-2-1961.

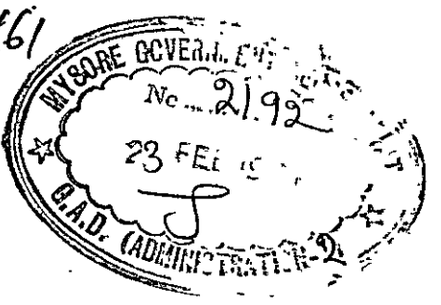
In the G.O. referred to above, one of the conditions is that each of the five Assistants should compile on an average 120 opinions per month. Sanction is accorded in respect of this compilation for a period of three months only. In the file leading to the issue of the Government Order, the Law Department has furnished amongst other terms of proposals, that there are about 4,000 opinions for compilation. According to the Government Order the opinions for compilation come to about 1800 regard being had to the number of Assistants, to be engaged for the work and the period for which sanction is accorded. Further it has been stated in the file that the work requires study and scrutiny. In view of its voluminous work the period for which sanction is now accorded would be too short and the work falls too short of the target aimed at. With a view to coming to definite proposals on the quantum of work and also for arranging proper distribution of work it is necessary that the file leading to the issue of the Government Order referred to above has to be looked into for correct appreciation of the proposals made therein. No direction can be issued in the Law Department without the file which has originated in this Department and quick action has to be taken only with reference to it. In these circumstances, the file referred to above may kindly be made available to this

Law 57/61/MS

..2..

Department early.

8819/
MS 9-A-6 (ADM-2). 22/2/61



The Enquiry file also
the SR Asstt is placed
below. May be perused and

VS, Law Deptt) 24/2/61

8819.
27/2/61

Registrar-I
Law Department.

[illegible]

[illegible]

[illegible] 1931.

It is considered necessary to accelerate the compilation of opinions passed by the Law Department on files so that such a compilation may serve as a guide in similar cases both to the Law Department and other Departments. Sanction is, therefore, accorded to employ six assistants of the Law Department who have formerly worked opinion cases and two typists on this compilation work for a period of three months. Sanction is also accorded to the payment of a special pay of Rs.30/- p.m. to each of the six Assistants and Rs.25/- p.m. to each of the two typists subject to the following conditions:-

(i) The work should be done without detriment to their normal work, outside the Office hours.

(ii) Each Assistant should compile, on an average, 120 opinions per month and a typist should type, on an average, 240 opinions a month. The Law Department should ensure that this scale of work is turned out by the Assistants and Typist.

The expenditure on this account is debitable to "35. [illegible] Secretariat - 1. Civil Secretariat- [illegible] Establishment".

By order etc.,

[illegible]

2/92

4/2/31

(Miss [illegible])
Under Secretary to Govt.

[illegible]

[illegible] Secretary, Executive, Secretary through Finance Department.

[illegible] Secretariat, Law Deptt.

[illegible] Secretary to Govt. (Accts).
The Asst. -do-
The Under Secy to Govt. Law Deptt. -do-
The Asst. -do-
The Reader for Weekly Gazette (3 copies).

STATEMENT SHOWING THE NUMBER OF OPINIONS FURNISHED BY THE LAW DEPARTMENT DURING THE YEARS 1957 to 1960.

Rev. Dept.	L.S.G & P.H.D.	P.W.D.	G.A.D.	Education Dept.	Agri. & Forest Dept.	Finance Dept.	Home Dept.	Com. & Ind. Dept.	P & D.	Services.	Total
~~1111~~ 1175	952	330	263	254	253	196	195	139	31	708	~~4412~~ 4476

DIGEST OF OPINION RECORDED BY LAW DEPARTMENT.

Act ..... Section .....

Brief context.

Question.

Opinion.

By .....

File No. of the Administrative Dept.

Diary No. Law Department.

Extract from theDigest of Opinions -
Page No.16 - Item No. 22.

=====

22. M/s. B.T. Co. who were under a contract t construct a grain godown failed to heed repeated warnings of the Executive Engineer and could not complete the work even in the extended time and at last the contract was rescinded by the ex-gratia payment.

Question:whether the Co.'s claim is tenable.

Held, that having regard to the urgency of work, the ~~pax~~ repeated warnings given to the contractors and the extension of time granted, the Ex. Engineer rightly exercised his discretion in refusing further extension of time and in taking steps to rescind the contract and forfeiting the security deposit.

Held, further that there is apparently no equity in favour of the contractors.

[R.L.A.'s No.297 - Confl., dated the 11th June 1948. File O. Agreement/48.]

Sl.No.3.

Mysore Religious & Charitable I
tutions Act, 1927, Section

Brief context:-

xx xx xx

Question:- Whether, in view of the decision of the Supreme Court in Commissioner Vs L.T.Swamiar reported in A.I.R. 1954 Supreme-Court, Government can take over the management of Trust properties under sec.18 of the Mysore Religious and Charitable Institutions Act, 1927?

Opinion:- In the Commissioner, Hindu Religious Endowments Vs L.T. Swamiar, the Supreme Court held that the action taken by the Endowment Board under certain sections of the Madras Hindu - Religious and Charitable Endowments Act, 1951, calling upon the Swamiji to appoint a manager to manage the affairs of the institution and imposing certain restrictions, affected the fundamental rights of the Swamiji, as the spiritual head of the Mutt to administer the property of the Mutt in accordance with law and the said provisions were therefore void. But so far as provisions in sec.18 of the ~~Act~~ Mysore Religious and charitable Institutions Act 1927 were concerned, they could be made applicable only when there is proof of misapplication or misappropriation of the trust property of religious and charitable institutions other than muzrai institutions. Therefore in the case of the institution (N) action could be taken to take over the management and do other acts to ensure proper performance of the trust or the management of the property, but before passing orders, notice to show cause will have to be issued to the parties concerned.

By: Additional Law Secretary.
File No. of the Revenue ~~Administrative~~ Department.
Diary No. 2181/Law I of 1958 - Law Department.

ABS.
16/8/61

U.O.T. 1/59-60

Adv. General.

Petition from Nimivenkatappa — 1089/ABS.
regarding mismanagement
of certain properties of a Mutt.

The question for consideration is: whether Government can take over the management of trust properties under section 18 of the Mysore Religious and Charitable Institutions Act, 1927? That section applies to religious and charitable institutions other than muzrai institutions. It empowers the Muzrai Officer, with the previous sanction of the State Government, to take over the management of the institution if there has been gross-mismanagement of the property of the institution or its misapplication or misappropriation of any property. The Muzrai Commissioner has reported that there has been gross-mismanagement inasmuch as there had been alienation of an item trust property and that the trustees had not

accounted for the income of the years subsequent to 1942. If these conclusions are correct then section 18 can be availed for taking over the management.

A doubt was raised in the note at the bottom of page 10 about the validity of section 18 in view of the decision of the Supreme Court in Commissioner HRE Vs. L.T.Swamiar (A.I.R. 1954 Supreme Court 282). What happened in that case was that the Endowment Board called upon the Swami to appoint a competent Manager to manage the affairs of the institution and passed certain orders imposing restrictions under certain sections. It was held on a scrutiny of the Madras HRC Endowment Act 1951 of sections 21, 30(2), 31 and some other sections mentioned in the last paragraph of the judgment that those sections ~~were invalid as they~~ conflicted with the fundamental rights of the respondent ~~as~~ Mathadhipathi in question and that they were therefore void. ~~There~~, During the course of the discussion, Their Lordships indicated that the Mathadhipathi was a spiritual head of the mutt whose duty it was to practice and propagate the religious tenets and to administer the property of the mutt in accordance with law. They also indicated that the only restriction that could be placed upon him was not to utilise or appropriate any income of the mutt property for purposes other than those covered by the objects of the mutt.

In the present case, there is no question of either ~~as~~ a Mathadhipathi or of imposing any restriction. Here is a case where the trustees have proved their incompetence to manage the trust

property; firstly by showing their inability to account for the surplus income of the trust property and secondly by an alienation of the item of the trust property contrary to the terms of the Will which created the trust. It is only under such circumstances where there is proof of misapplication or misappropriation of the trust property that section 18 intervenes and empowers the Muzrai Officer, with the previous sanction of the State Government, to take over the management and do other acts to ensure the proper performance of the trust or the management of the property. Notice to show Cause will have to be issued to the parties before passing the order.

(T.K. Tukol)
Addl. Law Secretary.
(23-4-1959)

MYSORE GOVERNMENT SECRETARIAT
N. 2181
Law 7
23 APR 1959
R. D.
LAW BRANCH

R. D.)

ABS
16/5/61

Sl.No. 13.

Mysore Town Municipalities Act, 1951. Section 61(iv).

Brief context:-

xx xx xx

Question:- Whether Government can repeal rules and bye-laws relating to the levy of octroi on cardamom and dry fish sanctioned by it on 17-2-1954 consequent of amendment of section 61(iv) according to Revision of State Laws Act, 1955?

Opinion:- Held, that Government accorded sanction to the rules and bye-laws relating to the levy of octroi on cardamom and dry fish at a time when section 61(iv) of the Town Municipalities Act was not amended. Secti 61(iv) is amended according to Revision of State Laws 1955. According to the amendment, a Municipality can levy octroi on animals or goods or both specified in Schedule II to the Act. Cardamom and dry fish are not specified in Schedule II. Hence the Municipality has no power to levy octroi on the said goods. Hence the ~~Bye-laws~~ and rules ~~framed by the Municipal Council, S.~~ to levy octroi on cardamom and dry fish framed in 1954 are no longe good law from the date of amendment of section 61(iv) and ~~from the said date the levy of octroi on the said goods are not valid.~~ Can't have force of law.

pl examine. MS is ruined by Dr Basavaraj

Rq 4 13/6/61

Sl.No. 13.

Mysore Town Municipalities Act, 1951. Section 61(iv).

Brief context:-

xx xx xx

Question:- Whether Government can repeal rules and bye-laws relating to the levy of octroi on cardamom and dry fish sanctioned by it on 17-2-1954 consequent of amendment of section 61(iv) according to Revision of State Laws Act, 1955?

Opinion:- Held, that Government accorded sanction to the rules and bye-laws relating to the levy of octroi on cardamom and dry fish at a time when section 61(iv) of the Town Municipalities Act was not amended. Section 61(iv) is amended according to Revision of State Laws 1955. According to the amendment, a Municipality can levy octroi on animals or goods or both specified in Schedule II to the Act. Cardamom and dry fish are not specified in Schedule II. Hence the Municipality has no power to levy octroi on the said goods. Bye-laws and rules framed by the Municipal Council, S. to levy octroi on cardamom and dry fish in 1954 are no longer good law from the date of amendment of section 61(iv) and from the said date the levy of octroi on the said goods are not valid.

Sl.No.13.

Mysore Town Municipalities Act, 1951.
Section 61(iv).

Brief context:- The Town Municipal Council framed bye-laws and rules to include cardmom and dry fish in the octroi Schedule. The Government accorded sanction to the same on 17-2-1954. The Municipal Council levied the octroi on those two items thereafter. Now Government proposes to repeal rules and bye-laws relating to levy of octroi on those two items. The President of the Municipal Council has attempted to justify the sanction accorded for levying octroi on the said two goods and has cited in support of his stand Government's letter dated 27-9-1952.

Question:- Whether the stand taken by the President, Town Municipal Council is tenable?

Opinion:- Held, that Government accorded sanction to the rules and bye-laws at a time when section 61(iv) of the Town Municipalities Act, was not amended. The letter quoted by the President relates to the year 1952 and it is stated therein that Schedule II of the Act, 1951 is only prescribing maximum rates of octroi in respect of goods mentioned therein and it cannot limit the powers of the Municipal Councils to levy octroi on other goods, if they are covered under section 61(iv) of the Act.

Section 61(iv) is amended according to Revision States Laws, 1955. According to the amendment, a Municipality can levy an octroi on animals or goods or both specified in Schedule II. Cardamom and dry fish are not specified in Schedule II. Hence the Municipality has no power to levy octroi on the said goods. Bye-laws and rules framed by the Municipal Council, S. to levy octroi on cardamom and dry fish in 1954 are no longer good law from the date of the amendment of section 61(iv) and from the said date, the levy of octroi on the said goods are not valid.

Therefore the stand taken by the President is not tenable.

By: Solicitor & Ex-officio Deputy-Secretary, Law.

File No. LLH 62 TBR 60 of the Administrative Department.

Diary No. 141/61.Law III. Law-Department.

Sl.No.13.

Mysore Town Municipalities Act, 1951.
Section 61(iv).

Brief context:- The Town Municipal Council/framed bye-laws and rules to include cardmom and dry fish in the octroi Schedule. The Government accorded sanction/the same on 17-2-1954. The Municipal Council levied the octroi on those two items thereafter. Now Government proposes to repeal rules and bye-laws relating to ~~kxy~~ levy of octroi on those two items. The President of the Municipal Council has attempted to justify the sanction accorded for levying octroi on the said two goods and has cited in support of his stand Government's letter dated 27-9-1952.

Question:- Whether the stand taken by the President, Town Municipal Council is tenable?

Opinion:- Held, that Government accorded sanction to the rules and bye-laws at a time when section 61(iv) of the Town Municipalities Act was not amended. The letter quoted by the President relates to the year 1952 and it is stated therein that Schedule II of the Act, 1951 is only prescribing maximum rates of octroi in respect of goods mentioned therein and it cannot limit the powers of the Municipal Councils to levy octroi on other goods, if they are covered under section 61(iv) of the Act.

Section 61(iv) is amended according to Revision States Laws, 1955. According to the amendment, a Municipality can levy an octroi on animals or goods or both specified in Schedule II. Cardamom and dry fish are not specified in Schedule II. Hence the Municipality has no power to levy octroi on the said goods. Bye-laws and rules framed by the Municipal Council, S. to levy octroi on cardamom and dry fish in 1954 are no longer good law from the date of the amendment of section 61(iv) and from the said date, the levy of octroi on the said goods are not valid.

Therefore the stand taken by the President is not tenable.

By: Solicitor & Ex-officio Deputy-Secretary, Law.

File No. LLH 62 TBR 60 of the Administrative Department.

Diary No. 141/61.Law III. Law-Department.

Subject :- Levy of ~~of~~ octroi on cardamom & dry fish.

Mysore Government, Secretariat | File No. of 196 . | [App. F. III 2

Serial No.

141/61-L-III
LLH 62 TBR 60

the opinion furnished by this ~~dept~~ at para 13 of the notes is for perusal.

A show cause notice was issued ~~issued~~ to the T.M.C Nidagene ~~Nidagene~~ on 3/12/60

the reply furnished by the president is at page 4 c/f.

wherein he has quoted a Govt letter no L.10189/ml 91-92-16 dated 27/9/1952, ~~and~~ in order defend the action taken by the T.M.C in levying octroi on cardamom & dry fish.

Note.—Contn. Sheet

Serial No.

Dry fish.

The above said letter is flagged "B".

The above said letter was issued on the lines of the opinion furnished by this Dept at paras 13 and 14 of the notes.

~~prior to the enactment of the Local Laws Act, 1969~~.

Before the amendment of section 61(iv) of the T.M Act 1951, there was wide power vested in the municipal councils to levy octroi on animals or goods or both brought within octroi limits

WD 07273—GPB—PZS—8,00,000—1960

Serial No.

for consumption, ~~sale or~~ use or sale therein.

It seems the opinion of this ~~dept~~ was recorded on the lines that schedule ~~to~~ II of the ~~Act~~ is only for prescribing maximum rates of octroi in respect of goods mentioned therein and it can not limit the powers of the Municipal Council to levy octroi on other goods if they are covered by the charging section namely section 61(iv)

But the power of the Municipal Council ~~to~~ to levy octroi ~~on goods~~ on animals or goods or both is limited by the

Note.—Contn. Sheet

Revision of State Laws Act 1955 (Act 1 of 1956)

Serial No.

Now Section 61(iv) of the J.M. Act reads as follows:—

"on octroi on animals or goods or toll" specified in Schedule-II

In view of the above said provision of Law the municipal councils will have to levy octroi on the goods specified in ~~each~~ schedule II of the J.M Act 1951.

The subsequent amendment of the provision of Section 61(iv) will not in any way affect the validity of

WD 07273—GPB—PZS—8,00,000—1960

Serial No.

The levy of octroi on cardamom & dry fish re: the Saklespura municipality which obtained the Sanction Govt to the Octroi rules in G.O. dated 14/2/1954.

flag. "W"

In the circumstances the opinion of this Dept will have to be revised and the show cause notice will have to be cancelled.

24/1

The Saklespur Municipality levied octroi on cardamom and fish. Sanction was accorded to the Bye-laws and Rules framed by the Mlty. in respect of this levy by G.O. dated 17-2-1954. Accordingly it appears that

Note.—Contn. Sheet

Serial No.

the Saklespur Mlty. went on levying octroi on these two articles. Subsequently the Mudigere Mlty. also proposed to levy octroi on cardamom and fish and sent Rules and Bye-laws for sanction. While the matter came up for sanction before Govt. this Dept. recorded its opinion that since these two articles had not been included in Schedule II of the T.M.C. Act, the Mlty. was not competent to levy octroi on these two articles and therefore sanction could not be granted to such levy. Finding that the Saklespur Mlty. was levying octroi on cardamom and fish, a Notice was issued to the Prsdt. of the Mlty. under Sec.209(i) of the T.M.C. Act to show cause as to why the Govt. Order according sanction to levy octroi on cardamom and fish should not be withdrawn and the two items deleted from the sanctioned Octroi Rules. In reply to this Notice the Prsdt. of T.M.C. has drawn the attention of Govt. to Govt. letter No.L.10189/Ml.91-52-16 dated 27-9-52 addressed to the Prsdt. T.M.C.Narasimharajapur in which it was pointed out that Schedule II of the T.M.C. Act was meant ~~only~~ to prescribe only maximum rate of octroi in respect of the goods mentioned therein and it cannot limit the powers of the Municipal Council to levy octroi on other goods if they are covered under Sec.61(iv) of the T.M.C. Act. The Prsdt. has further stated that on the authority of this letter cardamom and dry fish were included in the Octroi Schedule of the Mlty. and that therefore the inclusion of these two items and sanction thereto was justifiable. The Administrative Secretariat has stated that the stand taken by the Prsdt. is correct and this Dept. has been called upon to furnish its remarks.

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Now the question is not free from doubt and has to be examined in detail. But at any rate one thing is certain that after Section 61 was amended by the Mysore Revision of State Laws Act, 1955 by which the words 'specified in Schedule IV' were inserted in Sec.61(b)(iv), the Mlty. is incompetent to levy octroi on these articles and the Rules or Bye-laws of the Mlty. (because the Schedule framed under which, for the sake of argment may be taken to be valid when they were made have now become invalid by virtue of this amendment and to that extent the Rules or Bye-laws levying octroi on cardamom and dry fish are invalid and inoperative.

Sec.61 before its amendment provides that the Municipal Council after observing the preliminary procedure required by Sec.62 and with the sanction of Govt. may impose anyone or more of the following taxes at rates not exceeding those prescribed in Schedule I to VI, that is to say ..... (iv) an octroi on animals or goods or both brought within the octroi limits for consumption, use or sale therein.

By Mysore Revision of State Laws Act, this sub-clause (iv) was amended and after amendment, the said clause reads as follows:-

"(iv) an octroi on animals or goods or both specified in Schedule II brought within the octroi limits for consumption, use or sale therein".

Before this clause was amended, it appears that this Dept. had taken the view that Schedule II of the Act was only meant for prescribing maximum rates of octroi in respect of goods mentioned therein and that it could not limit the powers of the Municipal Council to levy

Note.—Contn. Sheet

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octroi on other goods if they are covered under Sec.61 (iv) of the T.M.C.Act 1951. In my opinion with respect of course, to the opinion recorded on former occasion the main sub-clause (b) controls the levy of octroi and by implication, the ~~xxax~~ phrase 'not exceeding those prescribed in Schedules I to VI' controls the levy of octroi on articles in respect of which alone the rates are specified. It is true that in the absence of the words 'specified in Schedule II' the Mlty. was competent to levy octroi on any animals or any goods if the words "prescribed in Schedule I to VI" were not there. In my opinion, the Mlty. is competent to levy octroi only on those goods in respect of which the Schedules have prescribed the maximum rate. It is true that the powers of the Mlty. to levy octroi is not directly ~~xx~~ related to the articles specified in Schedules ~~II~~, but however by indirect means and by necessary implication, the Mlty. was bound to levy octroi on goods specified in those Schedules because if it did not do so, the Mlty. would be failing to observe the mandatory requirement of the rate not exceeding those prescribed in Schedule I to VI. If no rates have been prescribed, the Mlty. would not be competent to comply with this provision and therefore it is incompetent to levy octroi on such articles for which no rates have been prescribed. By implication, it means therefore that the Mlty. is competent of levy octroi on those articles which have been specified in the Schedules I to VI and in respect of which the maximum rates have been prescribed. What was implicit in this Rule has been made explicit by the amendment of the Act in 1955. There is no substantial change in the intention of the Legislature and therefore

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the amendment of the Section does not in fact alter the position that obtained before. Hence I think, the Saklespur Municipality could not levy octroi on cardamom and fish because in respect of these articles no rates had been prescribed by the Schedule. If no rates had been prescribed, the Mlty. could not prescribe the rate for these articles which did not exceed the rates prescribed in Schedules I to VI because no rates were prescribed and those articles were not specified in these Schedules. Hence I think, the rules prescribing octroi on these articles can be deleted from the sanctioned Octroi Rules as per Notice served on the Municipality. The Notice is good and valid and the view taken by the President does not appear to be correct although it is based on the former opinion of this Dept.

As I said before, even though it may be assumed that the Mlty. was competent to levy these octroi duties under the law then prevailing, after the amendment of Sec.61, those rules prescribing octroi on cardamom and dry fish become inoperative and invalid as they are inconsistent with the present law and therefore they have to be deleted.

8/2/61

D5

270/D62
9.2.61

141/61/Law 3.

Serial No.

Law Department.

The Town Municipality, Saklespur framed bye-laws and rules to include cardamom and dry-fish in the octroi schedule. The Government accorded sanction to the same under Government Order No.L.15234-37/ML.88-53-453 dated 17-2-54. Octroi on the said goods was levied thereafter. The Government now propose to repeal the bye-law and the rule relating to the levy of octroi on cardamom and dry-fish as there has been an error in according sanction. The President, Town Municipal Council, Saklespur in reply to the show cause notice issued has attempted to justify the sanction accorded for levying octroi on the said two goods and has cited in support of his stand Government's letter No.L.10189/Ml.91-52-16 dated 27-9-52 addressed to the President, Town Municipal Council, Narasimharajapura. The Administrative Secretariat feels that the stand taken by the President is correct. The Government have accorded sanction to the bye-laws and rules framed by the Municipal Council, Saklespur to levy octroi on cardamom and dry fish at a time when the section 61(4) of the Town Municipalities Act was not amended. The letter referred to by the President, Town Municipal Council, Saklespur relates to the year 1952 and it is stated therein that Schedule II of the Act, 1951 is only for prescribing maximum rates of octroi in respect of goods mentioned therein and it cannot limit the powers of the Municipal Councils, to levy octroi on other goods, if they are covered under section 61(4) of the Town Municipalities Act, 1951. It is to be remembered at this stage that section 61(4) prior to amendment read as follows:-

"an octroi on animals or goods or both brought within the octroi limits for consumption, use or sale therein".

MDS—730—GPS—PZS—8,00,000—1954.

This read with section 61(b) lead to the view that Schedule II of the Act, 1951 is only for prescribing maximum rates on octroi in respect of the goods mentioned therein and it cannot limit the powers of the Municipal Council to levy octroi on other goods, if they are covered under section 61(4) of the Town Municipalities Act, 1951.

Section 61(4) is amended according to Revision of State Laws, 1955 (Act 1 of 1956) and it reads now as follows:-

> "an octroi on animals or goods, or both specified in Schedule II brought within the octroi limits for consumption, use or sale therein";

According to the amendment a Municipality can levy an octroi on animals or goods or both specified in Schedule II. If the animals or goods or both are not so specified in the Schedule II then the Municipality has no power to levy octroi on them. Cardamom and dry fish are not specified in Schedule II. Therefore it follows that the Municipality has no power to levy octroi on the said goods. Bye-laws and rules ~~framed~~ contrary to section 61(4) are not valid and cannot have force of law. The bye-laws and rules framed by the Saklespur Town Municipal Council to levy octroi on cardamom and dry fish in 1954 are no longer good law from the date of the amendment of section 61(4) and from the said date the said bye-laws and rules relating to levy of octroi on cardamom and dry fish which are not included in ...dule II are not valid. Therefore, the stand ... by the President, Town Municipal Council, ...r is not tenable.

(S.V.Papa Reddy)
Solicitor & Ex-officio
Deputy Secretary, Law.
23.3.61.

L.S.Gitment.)

Sl. No. 13.

Mysore J.M. Act 1951 section 61 (iv)

Brief context:— The J.M.C.S. framed bye-laws & rules to include cardmom and dry-fish in the octroi schedule. The Govt accorded sanction to the same on 17-2-54. the municipal council levied the octroi on those two items thereafter. now Govt proposes to repeal rules & bye-laws relating to levy of octroi on these two items. the president of municipal council has attempted to justify the sanction accorded for levying octroi on the said two goods and has cited in support of his stand Govt's letter dated 27/9/52.

question:— whether the stand taken by the president J.M.C.S is tenable

opinion:— ~~Govt accorded~~ Held that Govt accorded sanction the rules & bye-laws at a time when section 61(iv) of the ~~letter~~ Act was not amended.

availed by the president relates
year 1952 and it is stated there
that schedule II of the Act, 1951 is only
prescribing maximum rates of octroi
in respect of goods mentioned there
and it can not limit the powers of
the municipal councils, to levy
octroi on other goods, if they are
covered under section 61(iv) of the Act.

section 61(iv) is amended
according to Revision of State Laws, 1955.
According to the amendment a municipality
can levy an octroi on animals or
goods or both specified in schedule II
in Schedule II: Hence the municipality
has no power to levy octroi on the
said goods. Bye-laws & rules framed
framed by the Municipal council.S. to levy
octroi on cardamoms & dry-fish in
1954 are no longer good law from
the date of the amendment to
section 61(iv) and from the said
date, the levy of octroi on the said
goods are not valid.

by the [illegible] therefore the stand taken
[illegible] is not tenable

B. G. & Ex.

Sl.No.18.

Mysore Town Municipalities Act, 1951.
Section 205.

Brief context:- The proposal of the Deputy Commissioner is to adjust the amount deposited by the Town Municipal Council, Y in the Government Treasury on account of acquisition of certain Survey numbers ~~and also~~ towards the payment of enhanced compensation awarded by Court in respect of other survey numbers, for Municipal purposes.

by the Govt. and on behalf of the Municipality

Question:- Whether ~~Government can direct by an order such an adjustment~~ the proposal is in order and can be directed?

~~Opinion~~ Held:- Held, that the Government have acquired the lands for and on behalf of the Municipality. Hence the liability to pay the acquisition price and costs under the award is on the Municipality. The latter appears to be reluctant to pay the entire amount as reported by the Depury Commissioner. It is open to Government to direct under section 205 of the Mysore Town Municipalities Act that the amount deposited by the Municipality shall be adjusted and paid to the owner of the land. The Government may therefore direct by an order such payment.

Whether it is open to the Dy Com. to adjust the amount deposited by the T.M. Council in Sub Treasy, for making payment towards enhanced Compensation as per the orders of a Court, to the Govt. to acquisition of lands for the said municipality

Sl.No.18.

Mysore Town Municipalities Act, 1951.
Section 205.

Brief context:- The proposal of the Deputy Commissioner is to adjust the amount deposited by the Town Municipal Council,Y in the Government Treasury on account of acquisition of certain Survey numbers and also towards the payment of enhanced compensation awarded by Court in respect of other survey numbers, for Municipal purposes.

Question:- Whether Government can direct by an order such an adjustment?

Opinion:- Held, that the Government have acquired the lands for and on behalf of the Municipality. Hence the liability to pay the acquisition price and costs under the award is on the Municipality. The latter appears to be reluctant to pay the entire amount as reported by the Depury Commissioner. It is open to Government to direct under section 205 of the Mysore Town Municipalities Act that the amount deposited by the Municipality shall be adjusted and paid to the owner of the land. The Government may therefore direct by an order such payment.

By: Additional Law Secretary.

File No.LLH 68 TAQ 58 of the Administrative Department.

Diary No. 2669/58-Law VI. Law Department.

2669/58 Law VI

LH 68 TA Q 58

D.S.

13/5

1453

Subject:- Acquisition of land in S. No. 132/5 and 132/6 of Yalahanka Bangalore North Taluk - payment of enhanced compensation in L.A. Mis 176/50-51 on the file of Additional Sub-Judge, Bangalore

For the query of the Law Department at paras 4 and 5 of the notes the D.E. Bangalore has not properly replied to the points raised by this ~~department~~ department. He has simply stated in his letter dated 11-7-58 The extra amount which the Municipal council has to pay towards the enhanced compensation. He does not state under what provision of law such adjustment is proposed to be made.

flag "Z".

under section 212 of the T.M.C. Act 1951, Govt. may recover the amount from the Municipal fund.

The Municipal fund may be adjusted in consultation with the F.D.

The previous worksheet is also put up for perusal.

19/8/58

19/8

Ref: paras 1 & 5 and pages 1 and 2b c/f:—

1) See Sec. 212 T.M.C. Act 1951 Govt. may recover the amount from the Municipal fund.

The proposal is to adjust by Govt. the amount deposited by the Municipality in Yelahanka in the Govt. Treasury on account of acquisition of Sy. Nos. 80 and 80/1, towards the payment of enhanced compensation awarded by Court in respect of acquisition of 2 other properties of Sy. Nos. 172/5 and 172/6 for the same Municipality.

2) See M.A.H. re: deposit of the Funds.

3) D.C. has no objection to adjust the amount deposited by the Municipality towards the cost of acquisition of Sy. Nos. 80 and 80/1 as detailed in the note.

I think the cost is to be borne by the Municipality in the proportion in which the amount is deposited.

4) To disclose the objection for adjusting the amount or the credit of the Municipality in the Treasury, towards the cost of acquisition of Sy. Nos. 172/5 and 172/6 in view of the provisions contained in Sec. 111 (d) (i) and (iii) of the Land Revenue Act, Read with Sec. 205 of the T.M.C. Act 1951.

and Sec 61. of the Bgm T. M. Act 1951.
(Vide: also para 45 (a). of the Municipal Accounts Manual).

2669/58
Law VI

However, before such appropriation of the amount is made, order of Govt. in the behalf may kindly be obtained as the T. M. Act is becoming old.

D. N. Munikyppa
4/VII Kr.
15/9

(Addl. Secy. Law Dept.)

ADDITIONAL SECRETARY TO GOVERNMENT
No. 4039
17 SEP 1958
LAW DEPARTMENT

The Govt have acquired the land for and on behalf of the Municipality. Hence the liability to pay the acquisition price as also when the award is on the Municipality. The letter appears to be misconceived to pay the entire amount as reported by the Deputy Commissioner.

It is open to the Govt to direct under section 205 of the Mysore Town Municipalities Act that the amount deposited by the Municipality shall be adjusted or paid to the owner of the land. The Govt may therefore direct by an order such payment

T K T
3.11.58

L. L. (H).

LAW DEPARTMENT

The Government have acquired the land for and on behalf of the Municipality. Hence the liability to pay the acquisition price and costs under the award is on the Municipality. The latter appears to be reluctant to pay the entire amount as reported by the Deputy Commissioner.

It is open to the Government to direct under section 205 of the Mysore Town Municipalities Act that the amount deposited by the Municipality shall be adjusted and paid to the owner of the land. The Government may therefore direct by an order such payment.

(T.K. Tukol)
Addl. Law Secretary.
(3-11-1958)

L.S.G.Deptt.)

Sl. No.

M. T. M. Act 1951 - S. 205.

Brief context:- The proposal of the V. C. is to adjust the amount deposited by the T. M. C. in the Govt Treasury on account of acquisition of S. Nos. 80/1 and 80/2 and also towards the payment of enhanced compensation awarded by court in respect of acquisition of S. Nos 132/5 and 132/6 for the same municipality.

~~Material facts~~

Question:- Whether Govt can direct, by an order such an adjustment?

opinion:- Held, that the Govt

Sl.No.17.

Mysore Town Municipalities Act, 1951.
Section 61(iv).

Brief context:- It has been clarified that The term vegetable oil does not include groundnut oil. The Administrative Secretariat has sent a draft Bill for scrutiny proposing therein to amend item 11 and 40 of Schedule II to the Town Municipalities Act, 1951, with retrospective effect from the date of the Act, came into force, in order to validate action taken by the Municipalities in this behalf.

Question:- Whether the proposal of the Administrative Secretariat is legal?

Opinion:- Held, that it is not permissible to effect such an amendment retrospectively as no taxing legislation can be enacted with retrospective effect.

BY: Additional Law Secretary.

File No. LLH 207 TML 57 of the Administrative Department.

Diary No. 1802/57 Law VI. Law Department.

Levy of octroi duty on groundnut oil under the Mysore Town Municipalities Act 1951 Section - Whether the Act can be amended with retrospective effect to validate the levy and collection of octroi duty on groundnut oil by municipalities

Whether the Act can be amended by Municipalities with retrospective effect to validate the levy & collection of octroi duty on groundnut oil? E

Sl.No.17.

Mysore Town Municipalities Act, 1951.
Section 61(iv).

Brief context:- It has been clarified that the term vegetable oil does not include groundnut oil. The Administrative Secretariat has sent a draft Bill for scrutiny proposing therein to amend item 11 and 40 of Schedule II to the Town Municipalities Act, 1951, with retrospective effect from the date of the Act, which came into force, in order to validate action taken by the Municipalities in this behalf.

Question:- Whether the proposal of the Administrative Secretariat is legal?

Opinion:- Held, that it is not permissible to effect such an amendment retrospectively as no taxing legislation can be enacted with retrospective effect.

BY: Additional Law Secretary.

File No. LLH 207 TML 57 of the Administrative Department.

Diary No. 1802/57 Law VI. Law Department.

(74)

Routine Note. 2956

[To be used only for notes, requisitions, etc., not intended for permanent record.]

WD 05453—GPB—38,000—31-5-57

LLH 207 TNLS7.

D. No. 1802/Law 2

Subject: Levy of Octroi on ground-nut oil.

Reference is invited to the remarks in para 3 of the Law Dept. Notes, to the effect that ground-nut oil may not be considered as Vegetable oil without item 11 of Schedule II to the T.N. Act:

In view of the above legal opinion, ground-nut oil will not be liable for octroi duty, & the Town Municipal Council have no power to levy it. It is proposed to amend the Act. suitably to remove this anomaly. Accordingly the Law Dept. may kindly draft the amending Bill.

If approved, this may be referred to Law Section U, for scrutiny & the Bill.

Manchanda 24/5/57

Law Section U 24/5/57

(See V.)

24-5-57

10/12/57

Should routine notes be written on small slips, copied, or slips pasted on this form.

C. F. 74]

Routine Note. 2956 L&W Vi.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

Reference is invited to Law Dept's opinion at para 3 of the main file.

It is not legally possible to clarify by the issue of a notification retrospectively.

It appears that it may not be appropriate to undertake validating retrospectively legislation in cases where proceedings have been taken under the Myra Doon Municipalities Act, 1951 and in fact the validity of such proceedings has been challenged before any Court of law, it may be prudent to leave it as it is without undertaking any amendment.

At para 21 of the main file, the L&J Dept. has intended that effect. which is being taken to clarify the position in the necessary provision in the proposed draft Bill providing for uniform law for municipalities in view of this, no further action appears called for.

Dy
27/3/58
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27/3/58
27/3/58

Q. S. II

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

LLH 207 THL 57
2956 Low V

C.F.747

Routine Note.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

WD 05453—GPB—38,000— 31-5-5

In view of the opinion furnished by the Law Dept. in para 3 of the attached "groundnuts oil may not be considered as vegetable oil", the Food Dept. has drawn a draft Bill for legislating, proposing therein to amend items 11 and 40 of Schedule II of the Mysore T.H. Act 1951, with retrospective effect from the date the T.H. Act 1951 has come into force, in order to validate the action taken by some of the Municipalities which have levied octroi on groundnut oil also.

But it appears that so far, no body has challenged such levy specifically before any Court of Law. Moreover, it may not be desirable to clarify the matter by issue of a notification by way of amendment giving retrospective from the date the T.H. Act 1951 came into force, the proposed amendment may also bring in all sorts of unforseen complications regarding the refund of tax already paid etc. Moreover, the Hon'ble Minister for Food & Co-operation in para 21 has stated that the proposed amendment will be made while processing the draft for uniform ML Laws. under

B.—Should routing notes be written on small slips, must be copied, or slips pasted on this form.

2956 / 721/58

Law V. Law V

C. F 74]

Routine Note.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

the circumstances the proposed amendment appears unnecessary.

Kerr (Keeny)

24/VII Kerr.
28/3.

ADDITIONAL SECRETARY TO GOVERNMENT
No. 989
31 MAR 1958
LAW DEPARTMENT

SECRETARY TO GOVERNMENT
No. 1043
28 MAR 1958
LAW DEPARTMENT

ALS)

MM
3/3

It is not permissible to effect such an amendment retrospectively as no taxing legislation can be given enacted with retrospective effect. If there are no practical difficulties experienced by the municipalities, it is better to allow the matters as they are at present to be dealt with uniformly as a uniform law. The proposed amendment is likely to create litigation for refund of taxes illegally received and so it may be dropped.

Secy (LSG)

T. K. T.
7.4.58

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

LAW DEPARTMENT

It is not permissible to effect such an amendment retrospectively as no taxing legislation can be ~~given~~ enacted with retrospective effect. If there are no practical difficultires experienced by the Municipalities, it is better to allow the matters as they are and take up the matter while enacting a uniform law. The proposed amendment is likely to create litigation for refund of taxes illegally recovered and so it may be dropped.

(26)

(T.K. Tukol)
Addl. Law Secretary.
(8-4-1958)

Secretary,)
L.S.G. Deptt.)

M.T.M. Act 1951

Section 61(iv)
schedule II

Brief context:- the term vegetable ~~groundnut~~ oil includes groundnut oil has been clarified in the negative bill for scrutiny proposing ~~therein~~ to amend items 11 and 40 of Schedule II of the M.T.M. Act 1951 with retrospective effect from the date of the T.M. Act 1951 has come into force, inorder to validate action taken by the municipalities in this behalf.

Question. whether the proposal of the Adm ~~de~~ Sect is legal.

opinion:- Held, that it is not permissible to effect such an amendment retrospectively as no taxing legislation can be enacted with retrospective effect.

By A.L.S.

Sl.No.25.

Mysore Town Municipalities Act, 1951. Section 38(2).

Question:- Whether a valid presumption can be taken in favour of grant of a site free of cost to the Theosophical Society by a Municipality in the absence of any communication from the Government within the prescribed time of 3 months?

(2) whether it is desirable to take a policy decision in the matter of granting a site free of cost to religious or quasi-religious organisations?

Opinion:- Held that the ~~right~~ benefit of presumption and sanction has accrued by reason of the absence of refusal by Government within 3 months from the date of receipt of recommendation.

As regards the question of policy to be adopted in such cases, the Theosophical Society is not a religious body as is assumed. Even in case of grants to religious or quasi-religious organisations, there appears to be no legal bar. On the contrary the denial of an ordinary right to such an institution may violate Articles 14 and 26 of the Constitution. It may not be proper to take a policy decision in such matters and each case must be left to be examined on its own merits.

By: Deputy Secretary, Law.

File No. LLH 136 TDI 57 of LSG Department.

Diary No. 4441/58 Law VI. Law Department.

Sl.No.25.

Mysore Town Municipalities Act, 1951. Section 38(2).

Question:- Whether a valid presumption can be taken in favour of grant of a site free of cost to the Theosophical Society by a Municipality in the absence of any communication from the Government within the prescribed time of 3 months?

(2) whether it is desirable to take a policy decision in the matter of granting a site free of cost to religious or quasi-religious organisations?

Opinion:- Held that the ~~right~~ benefit of presumption and sanction has accrued by reason of the absence of refusal by Government within 3 months from the date of receipt of recommendation.

As regards the question of policy to be adopted in such cases, the Theosophical Society is not a religious body as is assumed. Even in case of grants to religious or quasi religious organisations, there appears to be no legal bar. On the contrary the denial of an ordinary right to such an institution may violate Articles 14 and 26 of the Constitution. It may not be proper to take a policy decision in such matters and each case must be left to be examined on its own merits.

By: Deputy Secretary, Law.

File No. LLH 136 TDI 57 of LSG Department.

Diary No. 4441/58 Law VI. Law Department.

441/58 Law VI
LF 136 T&S 57

Subject:- grant of site for construction of Theosophical Lodge in Madhugiri Town municipality.

1) The divisional commissioner in his letter dated 23-10-57 states that the Town Municipal council Madhugiri have resolved on 31-12-55 and 31-8-57 to grant ~~sites~~ site Nos 71 and 72 in the new extension Madhugiri free of cost to the Theosophical Society. The Theosophical Society has been registered under the ~~Regis~~ Registration Act 1904.

2) Further the divisional commissioner gives his views regarding the free grant of sites to the Theosophical Society at para 2 of his letter

at page 5 c/f.

flag "A"

that a free grant to a Religious Institution might set a precedent for several religious or quasi-religious organisations, of which there are quite a large number in the State.

3) He therefore suggest that it is desirable to take a policy decision in the matter.

4) The Adm Sect ~~to~~ sought the opinion of Law department on the Divisional Commissioner's letter dated 23-10-57. blag "9"

Vide para 33 of the notes.

5) The municipal council is empowered to grant immoveable property whatever may be its value freely with the previous sanction of the Govt as per section 38(2) of the T. M. Act. There is no specific provision in the T. M. Act 1957 to grant sites freely to Religious Institutions

the proposal of the municipal council was received in the Govt on 29-10-57.

4441/58 Law II

6) therefore the suggestion of divisional commissioner to regarding the taking of policy decision in the matter does not ~~arise~~ arise at all in view of proviso to Section 38(2) of the T.M. Act.

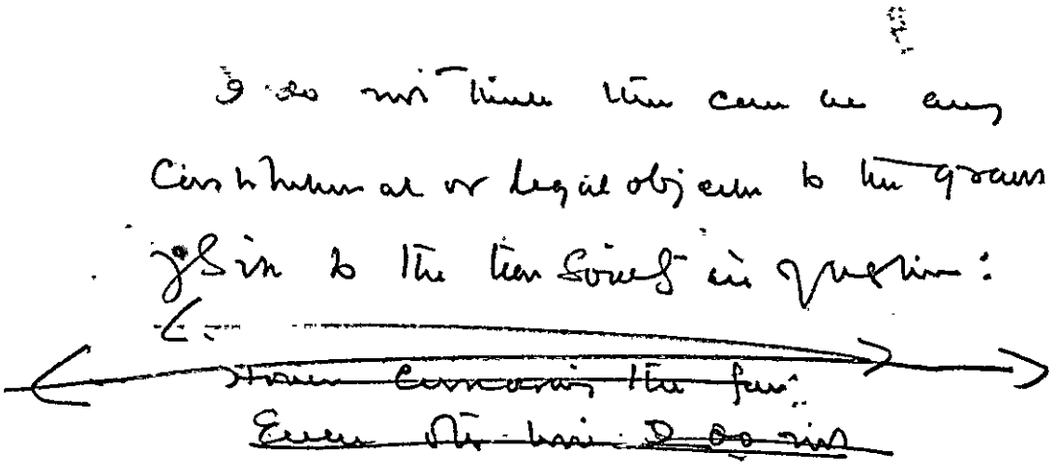
7) As the stipulated period of 3 months had already elapsed, it is presumed under the above proviso that the sanction of Govt has already accorded.

30/11/58.

8) The Municipal Council Kadhugiri passed a resolution dated 31-12-55 (page 17 c/f) resolving to grant the 2 sites bearing Door. Nos. 71 and 72 free of cost to the Karnataka Theosophical federation which is said to be a registered Society registered under the Societies registration regulation No. III of 1904 (page 20 c/f).

9) Then the Hl. Co. sent to the Dy. Commr on 3-1-57 (page 11 c/f) to obtain sanction of Govt. to grant the sites by resolution. The Dy. Commr. forwarded the resolution. The Dy. Commr. to obtain sanction. The Dl. Commrs letter to the Govt. (dtd. 5 Accepting) request to sanction is at page 5 c/f (Ex. A) and this letter is received by the Govt. on 29-10-57 requesting the Govt. to take a policy decision in the matter as the grant of sites is for a religious institution.

10) Under Govt order dated 28 (2) of the Dep. Tahsildar sanction is presumed to have been accorded unless it is refused within a period of 3 months from the date of receipt by the Govt. of the recommendation of the Hl. Council. In this case, 3 months has already elapsed and it is now use cancelling their sanction. Moreover, in this case expiry of the



LLH/136 T.D.857
4441/58 Vol VI

further facts:—

17) The facts of the case and the points that arise for consideration are fully set out by me in paras 6 to 10 of the office note.

In D.S. Law while agreeing with my views ~~expressed~~ stated in para 10 supra, re: the benefit of presumption of Law that has accrued in favour of the Municipality qua in regard to the free grant of land to the Theosophical Society, has raised a query, in para 11 supra as to the position regarding the land so granted by the Municipality if the Theosophical Society would not infringe in the Secularity of the State and whether it would not contravene the provisions of Article 27 of the Constitution of India.

Sec 3 of Article 27 provides that no tax is to be levied for the benefit of any particular religion or religious denomination, but the levy may be a tax. In the first place this is not a case of

of any Act. Further the Theosophical Society in Question cannot be considered as an institution which is engaged for the promotion or maintenance of any particular religion or religious denomination. The 1145 D&Cs 18.3.59

grant of title to Kuda an institution cannot be considered as one of the purposes which are deemed specifically for purposes of carrying for the promotion or maintenance of any particular religion. So in any view of the case the petitioner it appears that the cannot be any contribution or legal objection to the grant of the title in Question to the Theosophical Society and such grant does not contravene the provisions of Article 27 of the Constitution.

D. N. Mukherjee
4/VII
13-7-59
14

D. V. Kaz)

Law Department.

The grant in question has not been refused within the period specified by the proviso to sub-section 2 of section 38 of the Mysore Town Municipalities Act. Therefore, the presumption is in favour of the grant by the Municipality.

As regards the question of policy to be adopted in such cases, the Theosophical Society is not a religious body as is ~~owned by~~ assumed. Even in case of grants to religious or quasi-religious organisations there appears to be no legal bar. The Constitution of India does not prohibit such grants. On the contrary the denial of an ordinary right to such an institution may violate Articles 14 and 26 of the Constitution. It may not be proper to take a policy decision in such matters and each case must be left to be examined on its own merits.

(C.S.Wodeyar)
D.S.-Law.

L.S.G.Department.)

Sl. No. 25

M.T.M. Act 1951.

Section 38(2)

Brief context :- The T.M.C.M have resolved to grant site free of cost to the Theosophical Society.

Question :- whether Govt can take any decision in the matter.

Opinion :- Held, that

Sl.No.25.

Mysore Town Municipalities Act, 1951. Section 38(2).

Brief context:- The Town Municipal Council, M. have resolved to grant site free of cost to the Theosophical Society.

Question:- Whether Government can take any decision in the matter?

Opinion:- Held, that the grant in question has not been refused within the period specified by the proviso to sub-section 2 section 38 of the Mysore Town Municipalities Act, 1951. Therefore the presumption is in favour of the grant by the Municipality. As regards the question of policy to be adopted in such cases, Theosophical Society is not a Religious body as is assumed. Even in case of grants to Religious or quasi-religious organisations; there appears to be no legal bar. The Constitution of India does not prohibit such grants. On the contrary the denial of an ordinary right to such an institution may violate Articles 14 and 26 of the Constitution. It may not be proper to take a policy decision in such matters and each case must be left to be examined on its own merits.

By: Deputy Secretary, Law.

File No. LLH 136 TDI 58 of the Administrative Departme

Diary No. 4441/58/Law VI.
Law Department.

The Mysore Town Municipalities Act 1951. Section 38 (2) —

The Town Municipal council 'M' resolved to grant a site free of cost to the Theosophical Society. The government has not received sanction within the statutory period prescribed under section 38(2) whether the presumption in favour of the grant by the Municipality can be reached Held —

Sl.No.25.

Mysore Town Municipalities Act, 1951. Section 38(2).

Brief context:- The Town Municipal Council, M. have resolved to grant site free of cost to the Theosophical Society.

Question:- Whether Government can take any decision in the matter?

Opinion:- Held, that the grant in question has not been refused within the period specified by the proviso to sub-section 2 section 38 of the Mysore Town Municipalities Act, 1951. Therefore the presumption is in favour of the grant by the Municipality. As regards the question of policy to be adopted in such cases, Theosophical Society is not a Religious body as is assumed. Even in case of grants to Religious or quasi-religious organisations, there appears to be no legal bar. The Constitution of India does not prohibit such grants. On the contrary the denial of an ordinary right to such an institution may violate Articles 14 and 26 of the Constitution. It may not be proper to take a policy decision in such matters and each case must be left to be examined on its own merits.

By: Deputy Secretary, Law.

File No. LLH 136 TDI 58 of the Administrative Department

Diary No. 4441/58/Law VI. Law Department.

Cl.No.22.

Mysore Town Municipalities Act, 1951.
Section 45.

Brief context:- One D. ex-president and present Municipal Councillor, Town Municipal Council, M. has committed misappropriation.

Question:- Whether sanction of Government is necessary to prosecute ~~S~~ ex-president ~~and present~~ who is a Municipal Councillor Town Municipal Council, ~~M.~~ M?

Opinion:- Held, that if D. is now a public servant, i.e., a Municipal Councillor at the date of the ~~xxxx~~ accusation then sanction under section 197 Cr.P.C. will have to be accorded in respect of the items of amount misappropriated by him and in respect of which he is to be charge-sheeted.

By:- Additional Law Secretary.

File No.~~xxxx~~ HD 85/59 of the Home Department.

Diary No.3394/59 Law VI. Law-Department.

The Mysore Town Municipalities Act, 1951 — Section 45 — whether the sanction of Govt is necessary to prosecute one D, ex-president and present Municipal councillor of the Town Municipal council, M, on the charge of misappropriation of amount of the Municipality while he was its president —

Held :—

Sl.No.22.

Mysore Town Municipalities Act, 1951.
Section 45.

Brief context:- One D. ex-president and present Municipal Councillor, Town Municipal Council, M. has committed misappropriation.

Question:- Whether sanction of Government is necessary to prosecute D. ex-president and present Municipal Councillor Town Municipal Council, M.?

Opinion:- Held, that if D. is now a public servant, i.e., a Municipal Councillor at the date of the ~~xxxx~~ accusation then sanction under section 197 Cr.P.C. will have to be accorded in respect of the items of amount misappropriated by him and in respect of which he is to be charge-sheeted.

By:- Additional Law Secretary.

File No.~~xxxx~~ HD 85/59 of the Home Department.

Diary No.3394/59 Law VI. Law-Department.

3394/59 Law VI

8569/H.D

Subject :- prosecution of Sri M.E. Doddaiah Ex-Municipal president - Malavalli - reg.

The D.C. Mandya in his letter dated 2-7-59 states that in the circumstances stated by the D.S.P. Mandya drawing attention to section 45 of the J.M. Act 1951 according to which every Municipal councillor is a public servant within the meaning of section 21 of the I.P.C. Govt may kindly be addressed to re-examine the legal position.

The point for consideration is whether sanction of Govt

is necessary to prosecute
Sri. M.C. Doddiah Ex-president
and present Municipal councillor
J.M.C. Malavalli

As per the opinion of this
department at para 9 of
the notes "that the words
'when any public servant
is accused of any offence' must
necessarily be construed as
requiring that the person
accused must be a public
servant at the time of
accusation."

Sri M.C. Doddiah has been
accused in the capacity of
president, but at the time
of accusation Sri Doddiah ceased
to be the Municipal president,
though he continues in the office
~~in the office~~ in the capacity of
councillor.

~~now Govt are not prosecuting~~
~~Sri. Doddiah in the cap as~~

It appears that Sri. M.E. Doddiah continues to be a municipal councillor after he ceased to be the municipal president, J.M.C Malavalli

3394/59.

Odr.

Therefore under section 45 of the J.M. Act 1951 sanction of Govt for prosecution ~~appears~~ appears to be necessary.

W/S 197 Cr. P.C.

EA/7.

W/S 17

Sna
2/7

On the date when accusation was made the said Doddaiah has ceased to be a municipal president. Bour nevertheless he was a Municipal Councillor and he comes with the purview of Sec 45 Town M. Act 1951. When once he is a public servant & accusation is made against him, the provision Sanction

Govt is thus to be obtained. 42

during the circumstances explained by the D.P. that Doddaiah continued to be a Municipal Councillor even after coming over to the office of Municipal President, ~~to whom~~ Govt's sanction for prosecution seems to be necessary.

3394

ADDITIONAL SECRETARY TO GOVERNMENT
360
23 JUL 1959
LAW DEPARTMENT

PS
28/7

VENKATA VARMY
Under Secy. Law Dept.

If Shri M.C. Doddaiah is now a public servant i.e. is a municipal councillor on the date of accusation, then sanction will need (PC) will have to be accorded in respect of the items of amounts misappropriated by him or in respect of which he is to be charge-sheeted.

TKT
18.8.59

(42)

LAW DEPARTMENT.

If Shri M.C. Doddaiah is now a public servant i.e. a municipal councillor at the date of accusation, then sanction under section 197 Cr. P.C. will have to be accorded in respect

of the items of amounts misappropriated and in respect of which he is to be charge-sheeted.

(T.K. Tukol)
Addl. Law Secretary.
(19-8-1959)

W. D.)

SL no. 4

Brief context:- One "Ex-
president, a present Municipal
councillor J.M.C. Mc has
misappropriation

question.

Sl.No.23.

Mysore Town Municipalities Act, 1951. Section 207.

Brief context:- The Town Municipal Council, S. sold 3 sites in public auction to one R. R. made application for the grant of licence to construct buildings. S.Mutt claimed sites as belonging to it. So a dispute has arisen between Town Municipal Council S. and S.Mutt. in regard to the ownership of the sites.

Question:- Whether Government can take cognizance of the dispute under section 207 of the Town Municipalities Act?

Opinion:- Held, that the dispute is sought to be characterised as one under section 207(i)(b) of the Town Municipalities Act. The said section relates to disputes between a Municipal Council and any local authority and gives power to the Deputy Commissioner to decide such a dispute if it is with another Municipal Council or a Village Panchayat in the same district; and in all other cases the matter has to be referred to the Government. It is to be noted that out of various local authorities, the Deputy Commissioner is given power to deal with disputes relating to two classes of local authorities within the district. Sub-clause(b) relating to the power of Government is governed by the main requirement of sub-clause(i) where the dispute must exist between the Municipal Council and another local authority. Therefore, Government has no power to deal with any disputes between the Mutt which is not a local authority and the Municipal Council. Hence the dispute is outside the purview of section 207 and the Government cannot deal with it.

By: Deputy Secretary, Law.

File No.LLH 70 TDI 58 of the Administrative Department.

Diary No. 2395/58 Law VI. Law Department.

~~Section 207 of the Mysore Town Municipalities Act 1951~~ - Whether the State Government can take cognizance of a dispute between a Municipal council and a private person, ~~section~~ Held —

Sl.No.26.

Mysore Town Municipalities Act, 1951. Section 207.

Brief context:- The Town Municipal Council, S. sold 3 sites in public auction to one R. R. made application for the grant of licence to construct buildings. S.Mutt claimed sites as belonging to it. So a dispute has arisen between Town Municipal Council S. and S.Mutt. in regard to the ownership of the sites.

Questions:- Whether Government can take cognizance of the dispute under section 207 of the Town Municipalities Act?

Opinions:- Held, that the dispute is sought to be characterised as one under section 207(1)(b) of the Town Municipalities Act. The said section relates to disputes between a Municipal Council and any local authority and gives power to the Deputy Commissioner to decide such a dispute if it is with another Municipal Council or a Village Panchayat in the same district; and in all other cases the matter has to be referred to the Government. It is to be noted that out of various local authorities, the Deputy Commissioner is given power to deal with disputes relating to two classes of local authorities within the district. Sub-clause(b) relating to the power of Government is governed by the main requirement of sub-clause(1) where the dispute must exist between the Municipal Council and another local authority. Therefore, Government has no power to deal with any disputes between the Mutt which is not a local authority and the Municipal Council. Hence the dispute is outside the purview of section 207 and the Government cannot deal with it.

By: Deputy Secretary, Law.

File No.LLH 70 TDI 58 of the Administrative Department.

Diary No. 2395/58 Law VI. Law Department.

'58 Law VI

'70 T 8 T 58

Subject :- Disposal of sites by the Town Municipal Council - Sringeri in Keredande of Sringeri Town - objection by Sringeri Mutt.

The Divisional Commissioner States in his letter dated 28-3-58 that the Town Municipal Council, Sringeri sold three sites in Keredande in Sringeri Town in public Auction in January and August 1957. The sites were purchased by Sri. A.V. Ramaiah Naika. When Sri Ramaiah Naika applied to the Municipality for grant of a cinema building license for construction of a cinema theatre on the site, the incharge president reported to the Deputy commissioner that the sites in question belonged to the Jahagir Sri

The point for consideration is whether the site in question belongs to the Municipality or to the Mutt. "2395/

It appears from the Divisional Commissioner's letter the case is referred to Court under Section 207 (1)(b) of the T.M.C. Act 1951.

Section 207 (1)(b) applies only if the dispute arises between a Municipal council and any one more other local authorities but not otherwise.

Here the dispute arises between the Municipality and a private concern that is Mutt which is not local Authority.

Therefore Section 207 (1)(b) of the T.M.C. Act 1951 does not apply to the present case.

See 1 Lom 211 & See 50

The parties may seek their

reference:— page 1 c/f (Fl. 5') & paras 16 & 17:

It is stated that T.M.C

Srirangam Town 3 Cities having Municipal

Assemblies No. 5 66 in public auction in January

and August '57 & one Ramesh Naika,

when the purchaser applies for license &

239/58
Law II

6112/58
12.11.58

Constructs a house, Srirangam Mutt claimed

their properties as belonging & it.

As a dispute has arisen between

the Municipal council and Srirangam Mutt.

regarding the ownership of these Cities

on the request of the D.C, the Divl. Comm.

requests the orders of Govt. thereon

obtained in re: & the claim under

Sec 20 7 (1).(b) of the T.M. Act 1951.

Sec. 207 deals with the

Disputes between a Municipal Council and

one or more Local Authorities, the Local

Authority is defined in Hyam general clauses

Act, that "Local Authority shall mean a Municipal

Committee, District Board or other authority legally

entitled to or entrusted by the Govt. with the

Control or management of a Municipal or Local

fund" Srirangam Mutt institution cannot be

deemed as a Local authority. So this case

cannot come within the purview of Sec 207 and

the Govt. cannot

Law Department.

This case refers to a dispute between the Town Municipal Council, Sringeri and the Sringeri Mutt in respect of the sale of certain site by the Municipality to one Sri A. Ramaiah Naika in a public auction held on 16-1-57 for Rs.200/-. The dispute is sought to be characterised as one under section 207 (1)(b) of the Town Municipalities Act. The said section 207(1) relates to dispute between a Municipal Council and any local authority and gives power to the Deputy Commissioner to decide such a dispute if it is with another Municipal Council or a Village Panchayat in the same district; and in all other cases the matter has to be referred to the Government. It is to be noted that out of the various local authorities the Deputy Commissioner is given power to deal with disputes relating to two classes of local authorities within the district. Sub-clause (b) relating to the power of Government is governed by the main requirement of sub-clause (1) where the dispute must exist between the Municipal Council and another local authority. Therefore, the Government has no power to deal with any dispute between a private individual and the Municipal Council. In as much as the Mutt is not a local authority, it is a dispute outside the purview of section 207 and the Government cannot deal with it. The only course open to the Mutt is to establish its title by a suit. If notice of such suit is given the matter may be examined in the light

of the title that would be put forth.

(C.S.Wodeyar)
: D.S.-Law.:

L.S.G.Department.)

reference:- page 1 c/f (Fl. 5') 4 years 1641:-

It is claim of T.M.C

Swingers Soul 3 Lics having Municipal
Assessment No. 566 in public auction in January
and August '57 & one Ramin Naika.
When the purchaser applies for licence &
Constructed a house, Swingers Mutt claimed
these properties as belonging to it.

5112/Fol
12.11-56

As a dispute has arisen between
the Municipal Council and Swingers Mutt.
regard to the ownership of these Lics
on the request of the DC, the Dist Comm.
requests the orders of Govt. Comm. be
obtained in re: the claim under
Sec 207 (1).(b) of the T.M. Act 1951.

Sec. 207 deals with the
Disputes between a Municipal Council and
one or more Local Authorities, the Local
Authority is defined in Ryme general clauses
Act, that "Local Authority shall mean a Municipal
Committee, District Board or other authority legally
entitled to or entrusted by the Govt. with the
Control or Management of a Municipal or Local
Fund" Swingers Mutt undoubtedly cannot be
deemed as a Local authority. So this Court
cannot take within the purview of Sec 207 and
the Govt. Cannot take cognizance of the dispute.

(Sd/-)

~~R.L~~ 1977

S

Brief context. The Justice

three sites in public

one. R. ~~He~~ R. made applicati

grant of license. S. mult

the ~~properties~~ sites as belongi

it. So a dispute has ari

between J.M.C.S. and S. M

regard to the ownership

sites

Question :- Whether Gov

can take cognisance of

~~dispute~~ u/s 207 of the J.M

Act 1951.

Opinion ;- Held, the dispute

sought to be characterised as

one u/s 207 (1)(b) of the J.M. Act. Th

said section relates to disputes

between a municipal council

and any local authority and

gives power to the D.C to

Q: Whether an election held to fill vacancy caused by resignation after the expiry of statutory (3 months) period fixed under Sec. 18 is legally valid?

Sl. No. 24.

Mysore Town Municipalities Act, 1951. Section 18.

Brief context:- 4 Municipal Councillors of the Town Municip Council S. have resigned. After the lapse of statutory period fixed under section 18, elections were held for fil up the casual vacancies. The Divisional Commissioner requ to ratify the action taken by the Deputy Commissioner.

Question:- Whether the request of the Divisional Commissi may be approved?

Opinion:- Held, ~~that the [illegible] Circular No. [illegible] issued~~ that an election can be held eve~~n~~ that an election can be held even after the expiry of 3 months after the vacancy arose as t time limit prescribed under section 18 of the Mysore Tow Municipalities Act is only directory and not mandatory. ~~view of the said opinion, the election can be held.~~ The question of condoning the delay and ratifying the actior by the Deputy Commissioner, in holding bye-election, by t Government as suggested by the Divisional Commissioner (not arise.

By: Deputy Secretary , La

File No. LLH 265 TCE 58 (Administr tive Dep.rtr

Diary No. 1480/59.Law VI Dep..rtment.

Mysore Town Municipalities A 1951 - Section 18.

Elections were held to fill casual vacancies of retir municipal councillors af statutory period fixed u the section.

Whether the elections are l valid.

Held -

Sl.No.24.

Mysore Town Municipalities Act, 1951. Section 18.

Brief context:- 4 Municipal Councillors of the Town Municipal Council G. have resigned. After the lapse of statutory period fixed under section 18, elections were held for filling up the casual vacancies. The Divisional Commissioner requests to ratify the action taken by the Deputy Commissioner.

Question:- Whether the request of the Divisional Commissioner may be approved?

Opinion:- Held, that the Law Department has already opined in File No.LLH 501 TSH 57 that an election can be held even after the expiry of 3 months after the vacancy arose as the time limit prescribed under section 18 of the Mysore Town Municipalities Act is only directory and not mandatory. In view of the said opinion, the election can be held. The question of condoning the delay and ratifying the action taken by the Deputy Commissioner in holding bye-election, by the Government as suggested by the Divisional Commissioner does not arise.

By: Deputy Secretary , Law.

File No. LLH 265 TCE 58 of the Administrative Department.

Diary No. 1480/59.Law VI. Law. Department.

Sl.No.24.

Mysore Town Municipalities Act, 1951. Section 18.

Brief context:- 4 Municipal Councillors of the Town Municipal Council S. have resigned. After the lapse of statutory period fixed under section 18, elections were held for filling up the casual vacancies. The Divisional Commissioner requests to ratify the action taken by the Deputy Commissioner.

Question:- Whether the request of the Divisional Commissioner may be approved?

Opinion:- Held, that the Law Department has already opined in File No.LLH 501 TSH 57 that an election can be held even after the expiry of 3 months after the vacancy arose as the time limit prescribed under section 18 of the Mysore Town Municipalities Act is only directory and not mandatory. In view of the said opinion, the election can be held. The question of condoning the delay and ratifying the action taken by the Deputy Commissioner in holding bye-election, by the Government as suggested by the Divisional Commissioner does not arise.

By: Deputy Secretary , Law.

File No. LLH 265 TCE 58 of the Administrative Department.

Diary No. 1480/59.Law VI. Law. Department.

59 Law VI

LLH 265 TCE 58

subject:- Resignation of four municipal councillors in the T.M.C. Shiralakoppa.

1480/59

The divisional commissioner in his letter dated 27-10-58 states that it is reported that as a protest against the maladministration of the municipality four MC councillors sent in resignations to their office as MC councillors to the D.C. and that in view of the impending enquiries against the president the resignation letters have forwarded to the president for needful action

under section 15 of the
J.M. Act 1951. The president
has accepted the ~~resi~~ resignations
and reported that bye-elections
may be held to fill up
the casual vacancies.

The Divisional commissioner
in his letter dated 12-3-59
states, that he is sending
recommendation for the
supersession of the municipal
council separately.

He further states that as
per section 18 that the casual
vacancies shall be filled up
within a period of
three months, but
delay has been caused
in conducting elections to the
four vacancies, and his
action in conducting the
election after the ~~ca~~ case of
statutory period may be ratified.

1480/59

The point for consideration is whether the request of the divisional commissioner may be approved

Though statutory period of 3 months has been fixed for a p under section 18 this may be altered under rule 73 of the election Rules.

The action of the divisional commissioner may be ratified.

BB
11/4/59.

serving with a notice of the meeting
on the alleged ground of disqualification
since no notice of meeting was
served on him in respect of the alleged disqualification
a dispute regarding his
disqualification was pending
before the court for adjudication
Held:—

Routine Note.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

reference:

For the facts of the case please see the letter of the Divl. Commissioner at page 9 c/f:—

It is reported that 4 MC Councillors of Kurunegala have tendered their resignations to the D.C. Kurunegala who writes as MC Councillors in their own name to the Municipal president & take action under Sec 15 of T.M. Ord 1951. The presidents accepted the resignations on 17-7-58 though the DC had instructed him to accept the resignations pending orders on the report of V.D.C. re: dual administration of the Municipality. However the Divl. Commissioner has reported that on 29-10-58 he visited the Municipality. & on A.D.C. that such resignation shall take effect from the date of receipt of the notice of resignation by the president. It is further reported that the DC has issued instructions to the Returning Officer who is also the Kachcheri Mudaliyar to hold bye-election on 7-2-59 & take action to fill up these 4 vacancies.

As the vacancies have been kept on for more than the statutory period of 3 months Sections Conferring & the provisions of Section 18

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

C. F. 74]

Routine Note.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

WD 01785—G.P.O.—50,000—22-8-58.

of the 7th Nov 1951 the Dirs Comm. may find
Lumpkin order of 9th. for Conducting the election
and to publish the results taken by the Dec
in continuing the Members to take election
of both the bye elections.

Section 18 provides that where a
vacancy of a Municipal councillor occurs through ... resignation ... previous
to the expiry of his term of office, the vacancy shall
be filled up, unless a period of 2 months, by the
election or appointment as the case may be, of a
person who shall hold office so long only
as the Councillor in whose place he is elected or appointed
would have held office if the vacancy had not occurred.

These vacancies cannot be filled
by appointment under Section 10, as this is not a
case of failure to elect under Sec 18 as the elections
to fill up the vacancies have not been held
by the concerned authorities under Sec 18. Merely
because the concerned authorities have not taken
steps to hold the election within the Statutory
period of 2 months under Sec 18, the vacancies cannot
be allowed to remain unfilled for ever unless being filled up
by election for the Municipal Councillors by the
Concerned authorities and the elections (votes) cannot

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

P. 74

Routine Note.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

1785/282
30-4-59

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

C. F. 74] **Routine Note.**

[To be used only for notes, requisitions, etc., not intended for permanent record.

WD 01785--GRE

Law Department.

This department has already opined in file bearing Dy.No.LLH 501 TSH 57 that an election can be held even after the expiry of three months after the vacancy arose as the time limit prescribed under section 18 of the Town Municipalities Act is only directory and not mandatory. In view of the said opinion, the elections in question can be held. The question of condoning the delay and ratifying the action taken by the Deputy Commissioner in holding bye-election by the Government as suggested by the Divisional Commissioner (in his letter at page 9) does not arise.

(C.S.Wodeyar)
D.S.-Law.
4-5-1959.

L.S.G.Department.)

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

Sl. No. 24

~~M~~. T. M. Act 1951

Section 18

Brief contents. four ~~Nil~~ Councillors of T.M.C.S. ~~resigned~~ resigned. after the lapse of statutory period ~~fixed~~ under section 18, election were held for filling up of the casual vacancies. the Divisional Commissioner requests to ratify the action taken by the D.C.

Question:- Whether the request of the Divisional Commissioner may be approved.

opinion:- Held, that

serving with a notice of the meeting
on the alleged ground of disqualification
since no notice of meeting was
served on him in the alleged disqualification
a dispute regarding his
disqualification was pending
before the Govt. for adjudication
Held:—

Sl.No.19.

Mysore Town Municipalities Act, 1951. Rule 11.

Brief context:- Election to the office of the President Town Municipal Council M. was held on 22-6-1958 and one M. has been declared as duly elected as President. The election was challenged on the ground that one Councillor was prevented from taking part in the election.

Question:- Whether the election held on 22-6-1958 is illegal?

Opinion:- Held, that in file No.LLH 129 TEL 59, it is found that the Municipal Councillor has not incurred the alleged disqualification. Any dispute relating to such a vacancy is to be decided by the Govt. under section 14(3) of the Mysore Town Municipalities Act, 1951 and it was not competent to the President to exclude the ~~President~~ Councillor from participating in the election before the determination of such a dispute. The action of the president in not giving notice to the Councillor in the circumstances is un-authorised and consequently the election held on 22-6-58 is invalid. Therefore, the appeal petition under rule 11 of the Rules for regulating the election to the offices of the President and Vice President may have to be allowed.

By: Deputy Secretary, Law.

File No. LLH 143 TEL 59 of the Administrative Dept.

Diary No.4976/59-Law VI.
Law Department.

49 76/59 Law VI

LCH 143 TEL 59

Subject :- Election of president to the T.M.C. Melkote.

The divisional commissioner in his letter dated 29-9-59 states that ~~the~~ it is reported that at the Special Meeting held on 22-6-58 convened for the Election to the office of the president one Sri M.S. Malla Setty has been declared duly elected as president.

Election petition was filed by 4 councillors on 30-6-58, challenging the validity of the election

One municipal councillor has ~~+~~ been

prevented from taking
part in the election, and hence
the election may be set aside.

The point for consideration
is whether the election
held on 22-6-58 may be
set aside.

The Election petition filed flag 'R'
by the Municipal councillors
is within time.

The specific grounds alleged
in the petition are at paras.
I, II and III of the Election petition.

As for the first point
regarding preventing Sri.
Ramaswamy, municipal councillor from taking
part in the election is
materially affects the
result of the election

As seen from file No. LLH 129-TEL 59, that Sri. Ramasastry has not incurred disqualification u/s. 14(2)(c) of the T.M. Act 1951.

As per section 27(3) of the said Act the meeting notices must be served on the municipal councillor.

Sri Mallaselly states in his objection statement that the meeting notice was circulated as ~~usual~~ usual and as Sri Ramasastry was not in the station all this period he was not served personally.

The president could have served the notice as enumerated under section 166(1)(b). As seen from the meeting notice book this

this has not been complied with

the president is not empowered to disqualify a councillor. 4976/59

As per section 14(3) of the T.M Act it is the Govt which is empowered to disqualify a Mc councillor.

Hence the action taken by the Municipal President in not giving a notice as required under rule 1(2)(b) of the election rules is not in accordance with the Law

Hence preventing Sri Ramasastry from taking part in the election, though he was empowered to take part in the election as per the Statute, has materially affected the result of the election. Hence election may be set aside.

W/S II

BBe 17/10 · MMS 17/10

The election is said to have taken place on 22/6/1958. Obviously the notice of Special meeting was not sent to Ramaswamy. It was opined by the then president ~~Ramaswamy Iyengar~~ that Sri Ramaswamy was disqualified to participate in the election and hence no notice is sent to him. On this point also the election becomes invalid.

The other ground urged is that Ramaswamy was not given opportunity to place his point of view before he was disqualified. This point is before both in another W.P. No 2241 of 1959. and I feel that may not have any direct bearing on this.

Another point urged and not pressed later is that one Ranganada Krishna Setty has participated in the election proceedings though he was a defaulter in payment of taxes

4490/D82
20.10.59

These three points together with general objection that the procedure followed was not in question issued in the for form of the election petition.

Except the 1st point the other points are not pressed by the petitioner applaur.

As I have already stated the notice was not served to Sri Ramaseshay. That has violated the mandatory provision of Rule I (2) (b) of the Election rules. on this point also the election result is liable to be set aside. practically the President has served his term because he has acted as President one year fourmonths

DS) T3
20/10.

Law Department.

In file No.LLH 129 TEL 59 it is found that the Municipal Councillor has not incurred the alleged disqualification. Any dispute relating to such a vacancy is to be decided by the Government under section 14(3) of the Mysore Town Municipalities Act, 1951 and it was not competent to the President to exclude the Councillor from participating in the election before the determination of such a dispute. The action of the President in not

(13)

not giving notice to the Councillor in the circumstance
is unauthorised and consequently the election held
on 22-6-58 is invalid. Therefore, the appeal petition
under rule 11 of the Rules for Regulating the election
to the offices of the President and Vice President
~~shall~~ have to be allowed.

(C.S.Wodeyar)
D.S. -Law,
25-11-1959.

L.S.G.Department.)

S.L. No. 19.

M.T.M. Act 1951.

Rule 11

Brief context:- Election to the office of the president T.M.C. M. was held on 22/6/58 and one M has been declared as duly elected as president. the election was challenged on the ground that one committee was prevented from taking part in the election.

Question:- whether the election held on 22/6/58 is illegal?

Opinion:- Held.

Sl.No.23.

...nicipalities Act, 1951, Section 19.

Brief Facts:- Election to the office of the Vice-President, Town Municipal Council, R. was held and one R. was declared elected as Vice President. An Election petition was filed challenging the validity of the election within the stipulated time.

Question:- Whether publication in the Gazette does involve approval of Government or its adjudication on the validity of election?

Opinion:- Held, that section 19 of the Mysore Town Municipalities Act and Rule 7 (of the Rules regarding election of the President and Vice President of the Town Municipal Councils) contemplate publication of declaration of result of election and such publication in the Gazette does not involve approval of Government much less its adjudication on the validity of election. Therefore publication of the names of the elected members in the Gazette has to take place ~~as soon as may be after~~ soon after the declaration of the results of the election and need not await orders on disputes regarding election brought up in the meanwhile.

By: Deputy Secretary, Law.

File No. LLH 289 TCE 58 of the Administrative Department.

Diary No. 5120/58. Law VI. Law Department.

Q whether for publication of the result of the election of a member of the Council the petition filed after the expiry of the period is necessary when fresh election is ordered.

The Mysore Town Municipalities Act, 1951 - section 19 read with rule 7 of the Rules regarding election of the president and Vice president of the Municipal council whether ~~the~~ publication in the gazette of the result of election

does entail prior approval of
court's adjudication on the
validity of election
. Held.

~~4/7/58~~

5/20/58 Law V

Ramanayaram Town Panchayat - Election of the Vice President

The election of the Vice President was held on 7.7.58 and Sri Ramachandra Rao who has secured 11 votes as against 8 secured by another was declared elected as Vice President. According to rule 9 of the Election Rules relating to the Election of the President & Vice President of Town Municipal Council the Vice President so elected shall enter upon his duties ~~forthwith~~ after the expiry of the term of the Elected Vice President.

The validity of the election was contested by four Councillors by an appeal. The appeal was filed ~~within the prescribed days~~ Rules on 12-7-58 and it is within time as required under Rule 10. The Asst. Commr. held an enquiry into the Validity of the Objections and the findings of the enquiry were ~~framed~~ recorded. ~~as matters which were~~ The appeal filed by the Councillors was rejected. As per rule 11 the D.C. has forwarded the entire proceedings, and through the Asst. Commr.

Law Dept. has furnished his opinion that the election has been conducted regularly and the objections put forth by the petitioners 38/Pet 6.1.59 are not valid. ~~It is only after the enquiry~~

The enquiry was concluded and the D.C. has recorded his opinion in his report and it is open to Govt. to pass orders declaring the election to be invalid.

It is therefore, necessary, that Govt. should pass orders in this behalf and it is only when orders of Govt. are passed approving of the report that a notification under Section 4 of the Act can be issued. ~~It is only thereafter that a notification can be issued.~~

Sd/- T (?) 4.1.59

Sd/- 31/1

Draft 31/1

W/S

In view expressed in A' appears to be correct and perhaps in addition this may be approved accordingly.

D-V-Advs) 5/1

Law Department.

Section 19 of the T.M.Act and rule 7 (of the rules regarding election of the President and Vice President of Town Municipal Councils) contemplate publication of the declaration of the result of election and such publication in the Gazette does not involve approval of Government much less its adjudication on the validity of the election. Therefore, publication of the names of the elected members in the Gazette has to take place as soon as may be after the declaration of the result of the election and need not await orders on dispute regarding election brought up in the meanwhile.

However, in the present case as the publication has been delayed so long and the dispute is ripe for final orders, pulbication in the Gazette may await and abide the orders of the Government.

D.S.-Law.

(L.S.G.Department.)

Sl. No. 23

Mysore T. M. Act 1951

Section 19

Election to the office of the Vice-president T.M.C.R. was held and One R. was declared elected as V.P. An election petition was filed challanging the valdity of election

Question :- Whether publication in the Gazette dois involve approval of Govt in its adjudication on the validity of election?

Opin Held, that section

in the meanwhile.

25.

Si.No.23.

Mysore Town Municipalities Act, 1951, Section 19.

Brief context:- Election to the office of the Vice-President, Town Municipal Council, R. was held and one R. was declared elected as Vice President. An Election petition was filed challenging the validity of the election within the stipulated time.

Question:- Whether publication in the Gazette does involve approval of Government or its adjudication on the validity of election?

Opinion:- Held, that section 19 of the Mysore Town Municipalities Act and Rule 7 (of the Rules regarding election of the President and Vice President of the Town Municipal Councils) contemplate publication of declaration of result of election and such publication in the Gazette does not involve approval of Government much less its adjudication on the validity of election. Therefore publication of the names of the elected members in the Gazette has to take place as soon as may be after the declaration of the results of the election and need not wait orders on disputes regarding election brought up in the meanwhile.

By: Deputy Secretary, Law.

File No. LLH 289 TCE 58 of the Administrative Department.

Diary No. 5120/58. Law VI. Law Department.

Sl.No.20

Mysore Town Municipalities Act, 1951.
Section 64.

Brief context:- The Town Municipal Council, H. published the rules by affixing a copy of the same on the Notice Board of the Municipal Council and also by the beat of Tom Tom in the different parts of the town intimating the residents the fact that Government have sanctioned the octroi rules.

Question:- Whether the publication of the Octroi Rules framed by the Town Municipal Council, H. is in accordance with the requirements of section 64 of the Town Municipalities Act, 1951?

Opinion:- Held, that if as stated in the letter of the President, sanctioned rules and bye-laws were published along with the necessary notice not only by affixture on the Notice Board but also by beat of Tom Tom and by distribution of pamphlets, it can be taken that there has been sufficient compliance with the requirements of section 64 and in the result the rules came into force.

By: Deputy Secretary, Law.

File No.LLH 121 TML 57 of the Administrative Department.

Diary No.1803/57. Law VI. Law Department.

The Mysore Town Municipalities Act 1951 - section 64.
whether the publication of the octroi Rules framed by a Municipal council by affixing a copy of the same on the Notice Board of the Municipal council and also by the beat of Tom Tom in different parts of the town is sufficient compliance with the requirements of the section 64.
Held:-

Sl.No.20

Mysore Town Municipalities Act, 1951.
Section 64.

Brief context:- The Town Municipal Council, H. published the rules by affixing a copy of the same on the Notice Board of the Municipal Council and also by the beat of Tom Tom in the different parts of the town intimating the residents the fact that Government have sanctioned the octroi rules.

Question:- Whether the publication of the Octroi Rules framed by the Town Municipal Council, H. is in accordance with the requirements of section 64 of the Town Municipalities Act, 1951?

Opinion:- Held, that if as stated in the letter of the President, sanctioned rules and bye-laws were published along with the necessary notice not only by affixture on the Notice Board but also by beat of Tom Tom and by distribution of pamphlets, it can be taken that there has been sufficient compliance with the requirements of section 64 and in the result the rules came into force.

By: Deputy Secretary, Law.

File No.LLH 121 TML 57 of the Administrative Department.

Diary No.1803/57. Law VI. Law Department.

Routine Note.

*[To be used only for notes, requisitions, etc., not intended for permanent record.]

LL It 121 T [1.4.57]

D.No: 1803/Law VI.

Subject:- Levy octroi by the T.N.C., Hassan

For the facts of the case please see paras 103 to 110.

Reference is also invited to the remarks of the Law Deptt at paras 105 and 122.

wherein the following 3 points are raised.

1) whether there is any bye-law or rule made by the T.N.C., Hassan with regard to the publication of Rules along with notice under section 64 T.N. Act

2) whether the publication of the Rules were made in any other manner besides affixing at Rules along with the notice on the notice Board of the Municipal Office.

3) whether the text of the Rule as approved by Govt., were also published along with their notification No. MI. 81. PMA 216/54-55 dated 12-7-1955.

page 137 cf.

The 3 points mentioned above are answered in report of the President, T.N.C (x) Hassan dated 12-11-57.

(x) Page 143 cf.

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

C.F.74] **Routine Note.**

[To be used only for notes, requisitions, etc., not intended for permanent record.]

WD 05453—GPB—38,000—31-5-37

Replies to the points 1 and 3 are in the negative. As regards point 2 it is stated that the Rules were also published on the notice boards of the Post Offices and of the Coast of Tom Tod - Head Office in different parts of the Township especially the Township area - intimating the residents the fact that the same have sanctioned the octroi Rules.

The point for consideration is whether the publication of the octroi Rules, made by the T. M. C. Hassan, as above, is in accordance with the requirements under Section 6 of the T. M. Act.

From the report of the President it is seen that both the notices for sanctioning the Rules were published by affixing them on the Notice Boards of the Office of the T. M. C. - Hassan. But the notices and the Rules were not published in Kannada newspapers. Though the President contends that the publication was sufficient as required by the Act, yet legally, the procedure

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

[7.74] **Routine Note.**

[To be used only for notes, requisitions, etc., not intended for permanent record.]

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adopted by the T.N.C., Itanagar, falls short of Section 6A T.N.A. Act, & would be not be correct to expect the public to examine the notice and the rules which are published elsewhere.

[redacted],

Regulations should be laid before Law Ministry.

19/12/57

Kewal

19/12/57

A.S. II

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

C.F. 74]

Routine Note.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

LLH.121TML. 57

D.No.1803/ LAW VI.

REFERENCE :- Para 122 Deputy Law Secretary's Note.,

"1. The President, T.M.C., Hassan, has answered the points 1 and 3 in para 122 in the negative.

2. Section 64 - T.M. Act does not contemplate the publication of the sanctioned rules with notice specifying the date, in the Official Gazette.

3. In para 2 of his letter (page 193 CF), the President has stated that the Municipal Council published the Octroi Bye-Laws and Rules by affixing the same on the Notice Board of the Municipal Office and also published the same in the different parts of the Town by beat of Tom Tom, intimating the residents that Government have sanctioned Octroi Bye-Laws and Rules. If this statement is correct, it is to be held that provisions of Section 64 - T.M. Act have been complied with, as it is stated in the notice that rules will come into force from 1-9-1956.

4. Since the Octroi Rules have come into force from 1-9-1956, the procedure laid down in Section 209(1) has to be followed if these rules are to be modified by Government as proposed now."

Dep Secy)

31/12

D/S

64 30

31/12

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

Law Department.

If, as stated in the letter of the President, the sanctioned rules and bye-laws were published along with necessary notice not only by affixture on the notice board but also by beat of tom tom and by distribution of pamphlets, it can be taken

that there has been sufficient compliance with the requirements of Section 64 and in the result the rules came into force.

In view of this, recourse to Section 209 is obligatory for repeal or modification of the bye-laws and rules by the Government.

(Sd) R. Sanjeevalu

D.S.-Law.
3/1/1958.

Dy.Secretary, L.S.G.)

Sl. No. 20

Brief context:— The T.M.C. H published the rules, by affixing a copy The notice Board of the mb council, and also by the beat of Tom, Tom in different parts of the Town intimating the residents, the fact. that Govt have sanctioned the Octroi rules.

question:— whether the publicati of the Octroi rules, framed by The T.M.C. H is inaccordance with the requirements u/s 64 of the T.M. Act. 1951

Opinion:— Held, That, if

Sl. No. 20

Brief context:— The T.M.C. H published the rules, by affixing a copy The notice Board of the Mb council, and also by the beat of Tom, Tom in different parts of the Town intimating the residents, the fact that Govt have sanctioned the Octroi rules.

question:— whether the publication of the Octroi rules, framed by The T.M.C. H in inaccordance with the requirements u/s 64 of the T.M. Act. 1951

Opinion:— Held, That, if

Cl.No.21.

Mysore Town Municipalities Act, 1951.
Section 61(iv).

Brief context:-

xx xx xx

Question:- Whether ~~the~~ any produce grown by agriculturists living in town limits of Town Municipal Council, T. is subject to any octroi?

Opinion:- Held, that the goods on which the Municipality can levy octroi are mentioned in Schedule II of the Act. From the rules made by the Municipality T. it appears that they have included 59 items in Schedule I. to the rules as liable for octroi. Out of these items, numbers 1,11,23,27,32, 34 and 40 are agricultural products which are liable to octroi. Amongst them, wheat is the only foodstuff that is subjected to octroi. The other agricultural products which are foodstuffs like Jawar, Bajri, maize, Ragi, paddy, etc., are not at all subject to any octroi. The items of agricultural products mentioned in the Schedule except wheat are commercial crops liable to octroi duty if brought within the municipal limits even by the residents of T.

By: Additional Law Secretary.

File No. LLH 147 TML 57 of the Administrative Department.

Diary No.3096/58 Law VI. Law Department.

The Mysore Town Municipalities Act, 1951 — Sections 61 and 62 and Schedule II

Whether the agricultural products grown by agriculturists within the Municipal limits of a Town Municipal council is subject to any octroi duty —

Held —

Sl.No.21.

Mysore Town Municipalities Act, 1951.
Section 61(iv).

Brief context:-

xx xx xx

Question:- Whether the produce grown by agriculturists living in town limits of Town Municipal Council, T. is subject to any octroi?

Opinion:- Held that the goods on which the Municipality can levy octroi are mentioned in Schedule II of the Act From the rules made by the Municipality T. it appears that they have included 59 items in Schedule I. to the rules as liable for octroi. Out of these items, number 1,11,23,27,32, 34 and 40 are agricultural products which are liable to octroi. Amongst them, wheat is the only foodstuff that is subjected to octroi. The other agricultural products which are foodstuffs like Jawar, Bajri, maize, Ragi, paddy, etc., are not at all subject to any octroi. The items of agricultural products mentioned in the Schedule except wheat are commercial crops liable to octroi duty if brought within the municipal limits even by the residents of T.

By: Additional Law Secretary.

File No. LLH 147 TML 57 of the Administrative Department.

Diary No.3093/58 Law VI. Law Department.

Sl. No. 21

M. J. M. Act 1951.

Section 61 (iv)

Brief context :-

question :- whether the produce grown by agriculturists living in Town "T" is subject to any octroi.

opinion :- Held, that the goods

30 9/3/58 Law VII

LLH 147 TML 57

Subject :- Octroi Rules and Bye-Laws framed by T.M.C. Tumkur.

Octroi Rules and Bye-Laws have been approved by this Department at paras 31 and 32 of the notes.

The L.S.G. Minister's note at para 35 is for perusal.

The point for consideration whether the produce grown by agriculturists living in Tumkur is subject to any octroi.

As per Section 61 (b) (iv) octroi is leviable on animals or goods or both brought within the municipal octr

limits for consumption use
or sale therein. 3093/58 Law IV

Octroi may be levied
on the agricultural produce
mentioned Schedule II to the T.M. Act 1951
unless they are specially ~~exempt~~
exempted by the concerned
municipality.

The T.M.C Junkur may
levy octroi on agricultural
produce mentioned in the
Schedule I appended to the Octroi
rules at 41 c/p.

ADDITIONAL SECRETARY TO GOVERNMENT
No 4204
25 SEP 1958
L. NI.

25/9/58 under Sec. 61 (b) (iv) of T.M Act 1951
a Municipal Council with the sanction of the Govt.
may impose octroi on animals or goods of the
description specified in Sch II of the Act & prescribe
the octroi limits for consumption, use or sale therein.
So all the articles mentioned in Sch II to the Act
whether they are agricultural produce or not are
liable for octroi unless they are exempted by the
Govt. It may also be incidentally observed that the articles
agricultural produce are included in Sch II of the Act.
A. L. V.

25/9/58

So far as the powers of levying octroi by a Municipality are concerned, the relevant provisions are to be found in section 61 and section 62.of the Mysore Town Municipalities Act. It may also be mentioned that section 62(a)(i) contains a provision enabling the Municipality to grant "any exemptions which it proposes to make."

The goods on which a Municipality can levy octroi are mentioned in Schedule II to the Act. From the rules made by the Tumkur Municipality it appears that they have included 59 items in Schedule I to the rules as liable for octroi. Out of these items, Nos. 1, 11, 23, 27, 32, 34 and 40 are agricultural products which are liable to octroi. Amongst them wheat is the only foodstuff that is subjected to octroi. The other agricultural products which are foodstuffs like jawar, bajri, maize, ragi, paddy, etc. are not at all subjected to any octroi. The items of agricultural products mentioned in the schedule except wheat are commercial crops liable to octroi duty if brought within Municipal limits, even by the residents of Tumkur.

24

Secy. L.S.G. & P.H. Dept

(T.K. Tukol)
Addl. Law Secretary
25-9-1958.

Sl.No.9.

Mysore Town Municipalities Act, 1951.
Section 203.

Brief context:- One S. as the President of the Town Municipal Council obtained from the Red Cross Society, some Milk Powder drums, as free gifts, for distribution to poor people only. He has failed to hand over the account books, and has not properly accounted for the supply, and the distribution of the milk powder.

Question:- Whether an enquiry could he held against him under section 203 of the Town Municipalities Act?

Opinion:- Held, that Government may under section 203 order an enquiry into (1) any matters concerning the Municipal administration of any Municipal area, and (2) any matters with respect to which Government's sanction, approval or consent is required under this Act. Section 24 contemplates the functions of the Municipal ~~Councils~~ - Presidents. Sections 55 to 60 relates to obligatory and discretionary functions of Municipal Councils. Obtaining milk powder from the Red Cross Society as gift for distribution among the poor is neither a function of the Municipal President nor an obligatory and discretionary function of the Municipal Council. ~~An enquiry cannot~~ Hence no enquiry can be orderad to be held, under section 203 of the Town Municipalities Act.

By: Solicitor & Ex-officio Deputy Secretary, Law.

File No. LLH 104 TAO 60 of the Administrative Department.

Diary No.337/61-Law III. Law-Department.

Subject:- Nelamangala T.M.C. - Distribution of Milk powder by the president

Enquiry 4/5 203 of the T.M. Act 1951.

Province Government Secretariat | File No. of 196 | [App. F. III 2

Serial No.

337/61-L-III

LLH 104 TBOLO

As per the query of this dept at para 3 of the notes the Admn Sect have furnished the necessary information in the matter.

The Divisional Commissioner in his letter dated 6/2/63 states that obtaining and distribution of milk powder by the president becomes a subject matter concerning the municipal Administration (vide section 50(2) of the T.M. Act)

The subject matter in question does not come within the

Page 13c/F:

Note-... Sheet

Serial No.

perview of section 50 (2) of the T.M. Act 1951 or it can not be construed as the same pertains to Municipal administration or regarding which the sanction, approval or consent of Govt is required under this Act.

Hence it is not possible to hold enquiry u/s 203 of the T.M. Act 1951.

9/3

In this case the Ex President of Nelamangala T.M. was entrusted with Milk Powder cans for distribution to poor people by the Red Cross Society free of cost. It is reported that the Ex President has misappropriated himself and has failed to supply cans for

WD 07273—GPB—PZS—8,00,000—1960.

Serial No.

the distribution of Milk Tins. The question when any inquiry can be held regd. this vide 203 of the T.P. Act.

In my opinion this case does not fall within the ambit of S. 203. The Sub Judge thinks that Govt. may order an inquiry in to any matters concerning the municipal administration of any municipal area. or any matters with respect to which it is empowered, appeal or cause to be appealed under the Act.

Distribution of Milk Tins cannot be called a matter concerning the Municipal administration of a Municipal area. Nor is it one of the normal activities prescribed by the Act and to which powers, appeal or control of Govt is reqd. In short S 203 contemplates an inquiry in to the affairs of a Municipality and the Misconduct of its Officers or Presidt. Hence Sec 203 cannot be invoked.

Now the misconduct of the President may be brought under Sec 41 (2). for which Surcharge proceedings u/s 192 may have been taken. But in this case, no loss or deficiency has been caused to the Municipality because the Tins were given to the Municipality free of cost and they were meant for distribution to the poor people. What the President has done is that he has not attended to the distribution.

Note.—Contn. Sheet

File No. of 196 .

Mysore Government Secretariat

Serial No. 337

Sion no loss has been caused to the Municipality as the MS 192 is also not found.

Hence the Council could be awarded in the charge of Criminal Breach of Trust of it is found that he has misappropriated the funds and has failed to account for the same. No action under the T.M. Act is found necessary.

DS) C.V. Achar 15/3/61

S170 DSO 15-3-61

Law Department.

Sri N.K.Sadashivaradhya as the President of the Town Municipal Council, Nelamangala obtained from the Red Cross some milk powder drums as free gifts for distribution to poor people only. He has failed to hand over the account books and has not properly accounted for the supply and distribution of the milk powder. In these circumstances, the point for opinio of this department is whether an enquiry could be held against him under section 203 of the Town Municipalities Act.

The Government may/order an enquiry into (1) any matters concerning the Municipal administration of any Municipal area, and (2) any matters with respect to which Government's sanction, approval or consent is required under this Act. Information was sought fro the Administration Department whether obtaining and distribution of milk powder is a matter concerning the Municipal Administration and whether it is a matt with respect to which Government's sanction, approval or consent is required. The Divisional Commissioner in his letter at page 13 states that once obtaining the milk powder was done in the capacity of President Town Municipal Council, proper distribution thereof

also becomes a matter concerning the Municipal Administration. He does not state that it is a matter with respect to which Government's sanction, approval or consent is required under this Act. It is therefore necessary to see whether it is a matter concerning the Municipal Administration.

Section 24 contemplates the functions of Municipal Presidents. Sections 55 to 60 relate to obligatory and discretionary functions of Municipal Councils. Obtaining milk powder from Red Cross as gift for distribution among the poor is neither a function of the Municipal President nor an obligatory and discretionary function of the Municipal Council. Distribution of milk powder obtained as free gift from an institution cannot be said to be a matter concerning the Municipal Administration of a Municipal area. It is true that obtaining the milk powder was done in the capacity of President, Town Municipal Council but it does not follow that its proper distribution becomes a matter concerning the Municipal Administration as it does not fall with the purview of the functions of a Municipal President or a Municipal Council. It may be that the President is liable for criminal prosecution either for criminal breach of trust or mis-appropriation as the case may be at the instance of the Red Cross Society but the Government cannot assume jurisdiction under section 203 of the Town Municipalities Act and order an enquiry.

Therefore, the opinion of this department is that an enquiry cannot be ordered to be held against the President under section 203 of the Town Municipalities Act.

(S.V.Papa Reddy)
Solicitor & Ex-officio
Deputy Secretary,Law.

L.S.G.Department.)

Mysore T.M. Act 1951

St. No. 9 Section 203.

Brief context:- One Sri S. as the president of the Town Municipal Council, N. obtained from the Red Cross some milk powder. Drums as free gifts for distribution to poor people only. He has failed to handover the accounts books and has not properly accounted for the supply and the distribution of the milk powder.

Question:- whether an enquiry could be held against him under section 203 of the T.M Act.

Opinion:- Held, that Govt may under section 203 order an enquiry into (1) any matters concerning the Municipal administration of any Municipal area, and (2) any matters with respect to which Govt is sanction, approval or

concent is required under this Act. Section 24 contemplates the function of the municipal presidents. Sections 55 to 60 relates to obligatory & discretionary ~~of~~ of municipal councils. obtaining milk powde from Red Cross as gift for distribution among the poor is neither a function of the municipal president nor an ~~of~~ obligatory and discretionary function of the municipal council.

~~Further circumstances~~ An enquiry can not be ordered to be held under Section 203 by the J. M. Act.

by S. & Ex officio

Sl.No.7.

Mysore Town Municipalities Act,1951.
Section 61(iv).

Brief context:- Clarification is sought, regarding the levy of octroi, on oil tins, and machinary parts, by the Town Municipal Councils, in view of different rates of duty prescribed, in respect of those articles.

Question:- 1) What is the line of distinction between items № 15,16 and 57 ~~(prescribing the maximum rates of octroi,) mentioned~~ in Schedule II of the Mysore Town Municipalities Act, 1951; & (prescribing the maximum rate of octroi)

2) whether it is ~~xx~~ opened to the Municipality to prescribe lower rates for parts of oil tins or small tins?

Opinion:- Held, that the "words" used in each item permits an answer, to the point raised by the Department. Item 15 refers to "Iron and steel" or articles made therefrom including machinery, made of iron ~~and~~ and steel. Item 16 covers "alloys in any shape .....". So where an article or part of machinery is made out of two or more mixed metals, then it would be covered by this item. Item 57 is of residuary nature which covers "machinery parts" which do not fall under any of the other two items. e.g. machinery parts made of brass or copper. It may be noted "power-loom parts" are however governed by this item only.

As regards ocroi on oil tims, Art. 11 mentions different kinds of oils and the maximum rate of octroi is 0-2-0 "per tin or part thereof". It is therefore, open to the Municipality, to prescribe, lower rate for parts of tins, or small tins if they feel that a general rate would be harsh..

By: Additional Law Secretary.

File No. LLH 193 TTX 57 of the Administrative Department

Diary No. 1225/58-Law VI. Law Department.

Sl.No.7.

Mysore Town Municipalities Act,1951.
Section 61(iv).

Brief context:- Clarification is sought regarding the levy of octroi on oil tins and machinary parts by the Town Municipal Councils in view of different rates of duty prescribed in respect of those articles.

Question:- 1) What is the line of distinction between items ₦ 15,16 and 57 prescribing the maximum rates of octroi mentioned in Schedule II of the Mysore Town Municipalities Act, 1951;

2) whether it is ~~ge~~ opened to the Municipality to prescribe lower rates for parts of oil tins or small tins?

Opinion:- Held that the "words" used in each item permits an answer to the point raised by the Department. Item 16 refers to "Iron and steel or articles made therefrom including machinery, made of iron and steel. Item 16 covers "alloys in any shape .....". So where an article or part of machinery is made out of two or more mixed metals, then it would be covered by this item. Item 57 is of residuary nature which covers "machinery parts" which do not fall under any of the other two items. e.g. machinery parts made of brass or copper. It may be noted "power-loom parts" are howeger governed by this item only.

As regards ocroi on oil tims, Art. 11 mentions different kinds of oils and the maximum rate of octroi is 0-2-0 "per tin or part thereof". It is therefore open to the Municipality to prescribe lower rate for parts of tins or small tins if they feel that a general rate would be harsh.

By: Additional Law Secretary.

File No. LLH 193 TTX 57 of the Administrative Department.

Diary No. 1225/58-Law VI. Law-Department.

SCNO. 7. ~~Act. T.M. Act 1951~~

Act. T.M. Act 1951. Section 6(iv)

Brief context:— Clarification is sought regarding the levy of duties on oil and machinary parts by the Town Municipal Councils, in view of different rates of duty prescribed in respect of those articles

Question:— 1) What is the line of distinction between item 15, 16 and 57 prescribing the maximum rates of duties mentioned in Schedule II of the Mysore T.M. Act.

(2) Whether it is open to the Municipality to prescribe lower rates for parts of oil engines or small oil engines.

Routine Note.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

LL H 193 TT (x 5)

D. No. 7225 / Law II

Subject:- Levy of octroi on machinery parts and oil in Hospet Municipality — clarification

(22)

Clarification is sought regarding levy of octroi on oil and machinery parts by the Town Municipal Councils, in view of different rates of duty prescribed in respect of these articles.

The expression 'machinery parts' appears in items 15, 16 and 57 of the Schedule to the T.N. Act. Rates of octroi prescribed in respect of these three items are different, which are as follows:

Item (15) -	1 R. Per cent ad Valorem.
(16)	1-9-0 per cent ad valorem
(57)	2-0-0 per cent ad valorem.

The point for consideration is as to which of the rates mentioned above, should be adopted in respect of 'Machinery parts' which are invariably made of iron and steel. All the importers of Machinery parts, it is stated have urged that they should be

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

C.F.74]

Routine Note.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

WD 05453—GPB—38,000— 21-5-1

lowest
Taxed at the rate prescribed under item 15
i.e. at 1½ per cent ad valorem, whether the
machinery parts, & description may fall under
items 16 & 52.

According to Maxwell —

page 291 | "all charges upon the subject must be imposed
by clear and unambiguous language, because in some degree they operate as penalties.
In a case of reasonable doubt, the
construction of the statute must be favourable to the subject taxed".

If this principle is applied to the present
case, the contention of the importers of the machinery
parts that they should be charged as under
item 15. (lowest rate), has to be conceded.

As regards item 11, — "~~motor cars~~ tin
Tin in part thereof". According to Maxwell again,

page 63 "It is a common interpretation that all words,
if they be general and not express and precise, are
to be restricted to the fitness of the subject matter".
1225/Law VI It is stated that a tin usually contains 36 lbs.
Item 11, is quite clear. A tin of 36 lbs or
less, is liable to duty.

M Ramchandra
Law Off.
22-11-57

22-S-11

C. F. [illegible]

Routine Note.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

193
LLH ~~190~~ TTX 57

SUBJECT :- Levy of Octroi on Machinery and Vegetable and other Oils in Hospet Town - Municipality - Clarification:

For facts of the case please see Divisional Commissioner's letter ~~xxxxxx~~ at page I -C.F.,

The point for consideration is as to which of the rates mentioned in Item Nos.15, 16 and 22 in Schedule II of the Mysore Town Municipalities Act 1951 should be adopted for levying Octroi on Machinery parts, which article appear in all these three items prescribing different rates.

It can be seen that Item 15 relates to levy Octroi on Iron and Steel & articles made therefrom including Machinery parts, thereby implying that the Machinery parts made up of Iron and Steel are liable to be charged at the rate of ~~1~~ Re 1-0-0 per cent advolarem. Hence, such of the Machinery parts made out of Iron and Steel will come under Item 15 for purposes of levy of Octroi at the rate of Rs.1-0-0.

Regarding Item 16, it may be stated that such of the Machinery parts made out of alloy (i.e. two or more metals) will come under this category for purposes of levy of Octroi at the rate of Rs.1-9-0.

Regarding Item 57, it can be stated that the Machinery parts which do not come under the category of Items 15 and 16 will come under Item 57 and Octroi may be levied on such

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

C.F.74] **Routine Note.**

[To be used only for notes, requisitions, etc., not intended for permanent record.]

WD 05453—GPB—38,000

LLH·193TTX57

1225/Law VI

Machinery parts up to the maximum of Rs 2/ per cent advalarem.

The other point for consideration is in respect of Item No.11 of Schedule II of T.M. Act. Under this Item Octroi on Oil at the rate of 2 Annas per tin or part thereof can be levied. But the intention of the Legislature seems to be to charge Octroi up to the maximum rate of 2 Annas per tin of 36 lbs. or part thereof. Any way, if any particular Municipal Council wants to collect lesser rate within such maximum rate of 2 Annas for smaller tin of 5 lbs. etc., it is open to such Municipality to make rules in that behalf and charge at a lesser rate as it deems fit, as the rate of 2 annas prescribed in the schedule is the maximum rate.

J.M. Munshi
24/V II Kr.
21/12

ADDITION TO GOVERNMENT 4583 31 DEC 1957 LAW DEPARTMENT

LAW DEPARTMENT.

1225/Law VI

The first question for consideratio is what is the line of distinction between items 15,16 and 57 prescribing the maximum rates of octroi mentioned in schedule II of the Mysore T.M.Act ? The "Words" used in each item furnish an answer to the point raised by the Department.

ITEM 15 refers to "iron and steel or articles made therefrom including machiners parts" . So this item relates exclusively to articles, including machinery, made of iron and steel. Item 16 covers "alloys in any shape.....". So where an article or part of machinery is made out of two or more mixed metals, then it would be covered by this item. Item 57 is of residuary nature which covers "machinery parts" which do not fall under any of the other two items. e.g. machinery parts made of brass or copper. It may be noted "power-loom parts" are however governed by this item only.

The second point raised is as regards octroi on oil tins Art. 11 mentions different kinds of oils and the maximum rate of octroi is 2 As. "per tin or part thereof". It is open to the Municipality to prescribe lower rates for parts of tins or small tins, if they fell that a general rate would be harsh.

Sd/-T.K.TUKOL

ADDL.LAW SECRETARY

16/1/58.

Secretary
L.S.G

Sl.No. 33.

Mysore Entertainments Tax Act, 1958. S/

Brief context:-

xx xx xx

Question:- Whether the admission to the Children Film exhibited by Amarakala Niketan is to be exempted from the entertainment tax under the Act?

Opinion:- It is not possible to grant general exemption as requested, as there is no provision in ~~xxxxxx~~ section 7 which enables the Government to grant a general exemption in respect of all shows wherever they might be exhibited within the State

By: Additional Law Secretary.

File No. RD 61 CEX 59 of the Revenue Department.

Diary No. 6042/Law I of 59 of the Law Department.

Sl No 33 6042/Law7.

Mysore Government Secretariat

File No. RD 61 CEX of 1959. [App. F. II

Serial No.

Exemption from payment of Entertainments Exhibition of Tax Act in respect of Childrens Film. By Amara Kala Niketan.

Under Section 7 of the Mysore Entertainments Tax Act 1958. the entertainments Tax is not to be levied on payments for admission to any entertainment where the State Government is satisfied that the said entertainment Comes within the purview of one of the clauses (a) to (e) of the Sub-Section (1) of the said Section 7 and makes a declaration by an Order that the ~~a~~ order shall not be levied. ~~This power has been delegated to the~~ "Entertainments Tax" has been defined as in clause (f) of Rule 3 of the Mysore Tax ~~Entertain~~ Entertainments Tax Rules 1959, as "the tax payable under Section 3 of the Act". Section 4 Contemplates the levy of an additional entertainments Tax on Cinematograph Shows and this is additional entertainments Tax under Section 4 of the Act. has been defined as "Cinematograph Shows Tax". ~~In View of the definition of~~ See the under clause (i) of the Rule 3 of the Cinematograph Rules 1959. In Views of the definition of "entertainments Tax", it therefore appears that the exemption Contemplated under Section 7 of the Act, is only in respect of entertainments Tax leviable under Section 3 of the Act and not in respect of the Cinamatogr

Note.—Contn. Sheet

Mysore Government Secretariat

Serial No.

Shows Tax leviable under Section 4 of the Act although the said tax is an additional entertainments Tax Act.

The power of State Government under Section 7(1) of the Mysore Entertainments Tax Act has been delegated to Commercial Tax officer having jurisdiction over the area where the entertainments is to ~~take place~~ Conducted. Section 16(2) of the Act clearly specifies that "the exercise of powers delegated under Section 16(1) is also subject to Control and revision" by Govt. Therefore ~~the~~ although the power to granted exemption under Section 7(1) ~~of~~ has been delegated to the Commercial Tax officer having jurisdiction ~~it does not~~ this delegation of power does not ~~preclude~~ prevent the Govt from exercising the like power under Section 7(1) if need be. Therefore it appears that if the Govt is satisfied that the ~~exemption~~ the entertainment comes within the purview of ~~Section~~ clauses (a) & (c) of Sub-Section (1) of Section 7, then ~~the exemption~~ it can make ~~Could be granted by~~ a declaration ~~to~~ by an order that the entertainments Tax shall not be levied on Shows by Amara Kala Niketan in the State.

Mysore Amusements Tax Act 1932 is one of the Acts which stand repealed ~~under Section~~ in pursuance of 19 of the Mysore Entertainments Tax Act, 1957 with

WD 04700—GPB—PZS—8,00,000—1958

6042/Law P

Mysore Government Secretariat

File No RD 61 CEX of 1959.

[App. F. III 2

Serial No.

the Coming into force of the Entertainments Tax Act. But there is no provision in Section the ~~said~~ Mysore Entertainments Tax Act similar to Section 24 of the Mysore General clauses Act 1899, and therefore the exemption granted under the Mysore Amusements Tax Act 1932, in the Mysore Area, prior to its repeal does not continue to be in force even after its repeal.

16/11/59

The views expressed in para 6 N/C are correct. Besides this the person to grant exemption under Sec 7(1) has been delegated to the C.T.O. and hence Govt. cannot exercise the power now. The only power that can be exercised by Govt. is the respect in Central and review in exercising such power by Tax Officers functioning in ~~Rule~~ Sec 16(2).

9/1/60

ACS)

99/ACS
11-1-1960

Note.—Contn. Sheet

6042/Law I
RD 61 CEX 59

LAW DEPARTMENT.

The proprietors of the Amarakala Niketan have approached the Government for grant of general exemption from the entertainment tax under Section 7 of the Mysore Entertainment Tax Act,1958. Sectio 7 of the Act deals with the Government power of granting exemption. There is no privision in that Section which enables the Government to grant a general ~~exemption~~ exemption in respect of all shows wherever they might be ~~exempted~~ exhibited within the State. The fact that such general exemption was granted under the Old Act will not avail the petitioners; because Section 5(1)(b) of the Mysore Cinematograph Shows Tax Act,1951 and Section 8(2) of the Mysore Amuseme Tax Act,1932 (prior to its omission in 1956) expressly provided that by general or special orders the Government ~~may~~ might exempt any class of entertainment from liability to Entertainment Tax Act. There is no such provision in the present Act. Therefore, it is not possible for Government to grant general exemption as prayed for by the petitioners.

MYSORE GOVERNMENT SECRETARIAT
No. 6042/59. Law I
12 FEB 1960
R-D.
LAW -RANCH

(T.K.Tukol)
Additional Law Secretary.
(11-2-1960)

R.D.)

4520/Law I

Mysore Government Secretariat

File No. RD 211 CSL of 1959. [Ap

Serial No.

Regarding liability of Commission Agents to pay license fees under Section 6 of the Mysore Sales Tax Act 1957

1. Regarding the point Raised at para 11, with reference to the notes at para 6 and 7, it is submitted that the ~~registration~~ license ~~fee~~ obtained on payment of ~~registration~~ license fee, under the repealed Act was for being assessed under the ~~Act~~ enactments repealed while the ~~reg~~ licensefee prescribed under Rule 25(4)(a) is for assess being assessed under the Mysore Sales Tax Act, 1957. Hence it does not appear to be feasible to invoke provisions of Section 46(6) of the Mysore Sales Tax Act 1957 in this Case.

2. As regards the point raised at para 9, it appears that the View expressed by the Revenue Secretary at para 9 appears to be Correct

26/8/59

Please put up relevant Rules under the Sales Tax Act & Sparkle

12/1965

The Copies of the Sales Tax Act and Rules were not immediately available as they had been taken ~~placed~~ for reference.

The same is obtained and ~~placed~~ submitted below.

14/10/59

Contn. Sheet

File No. of 195 .

Mysore Government Secretariat

Serial No.

Two questions are referred to this Committee
1 Whether any amendment to Rule 25(4) is necessary to give relief to a dealer who has already a license under the repealed Act from obtaining a fresh license under the present Act during the
2 Whether the Commissioner Appeals of Income Tax should be required to issue license both under Sec 6 as well as Sec 11?

In respect of the 1st question the Revenue Secretary has after careful thought expressed a view that Sec 40 of the 1957 Act would operate to relieve the dealer from the necessity of obtaining any fresh license this view is correct with a qualification. If the license issued under the old Act corresponds in all the particulars with that the present license is limited to carry then S. 40 would save the rights of the party as created by the license under the repealed Act. In other words the license issued under the repealed Act would be effective in so far as it is concerned the matters therein.

So far as the second question is concerned I think the view taken by the Revenue Secretary is correct Sec 11 makes specific provision

Serial No.

for agents doing business on commission basis Sec 6(1) read with Sec 11 will suggest that a Commission Agent is distinct from the dealer and under Sec 6 it is the dealer alone who is made liable and not the agent. Reference may be made to Forms Nos 11, & 12. There is no mention of agent in Form No 11 while Form No 12 deals agents. It is therefore clear that no license is necessary under Sec 6 for a Commission agent.

A. V. Anantha Rao
12 XII 45

ALS)

Note.—Contn. Sheet

amendment, since section 40 of the Mysore Sales Tax Act, 1957, saves all rights and privileges acquired or accrued under the repealed enactments. The licence which they had obtained under the repealed enactments will enure to their benefit for the full period mentioned in the licence.

The second question is whether a commission agent should obtain licences falling under sections 6 and 11 of the Mysore Sales Tax Act, 1957? There can be no doubt that under section 11 every commission agent has to obtain a licence on payment of a fee not exceeding Rs.50/-. The question as to whether he should obtain a licence under section 6 also is not free from difficulty. Section 6 lays down that subject to such restrictions and conditions as may be prescribed, including conditions as to licence and licence fees, the sale of certain goods and articles mentioned therein shall be exempt from sales-tax. While exempting these goods from sales-tax, the section does not, however, exempt the dealer from taking out a licence and payment of licence fee prescribed under the Act. Rule 24 framed under the Act requires every dealer ~~not only~~ dealing with the commodities mentioned therein but a ~~also whose~~ turnover of not less than Rs.7,500/- to take out a licence. The word "dealer" as defined in section 2(k) includes "a commission agent, broker, del-credere agent .....". Therefore, a commission agent who deals in the articles mentioned in Rule 24 and section 6 as exempted goods will have to take a licence under Rule 24 read with section 6. It appears from sub-section (2) of section 6 that the licence fee is to be computed on the total turnover of the dealer in respect of each place of his business and

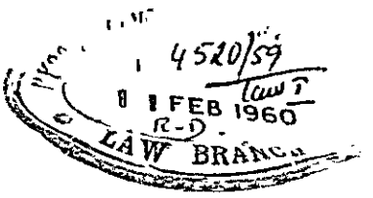
A-85

LAW DEPARTMENT

The first question is as to whether any amendment should be made in order to exempt the dealers from licence fee in respect of the remaining period for the year 1957-58 after the new Act has come into force? There is no need for such

[redacted] to be levied as if it were a tax or an addition thereto. The underlined words indicate that though the licence fees mentioned in Rule 25(4) are termed as fees, virtually the fees amount to tax at reduced rate on the goods mentioned therein. In view of this position, the view taken by the C.C.T. that a commission agent should take licences both under sections 6 and 11 is correct subject to the condition that he also deals in goods specified in section 6 and Rule 24.

(T.K.Tukol)
Addl. Law Secretary.
(9-2-1960)



R.D.)

ABS
19/5/61

CORRESPONDENCE FILE

File No. 20

MYSORE GOVERNMENT SECRETARIAT

Department of .....

Section .....

Subject :—

Writ Petition No. 137/1961

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Writ Petition No: 137 of 61.

Between

M.H. Manchigiah. Petitioner

And

The Stateof Mysore
and another. Respondents

AFFIDAVIT ON BEHALF OF RESPONDENT NO:1.

I, R.J. Rebello, major, resident of Bangalore, do solemnly affirm and state as follows:-

1. I am the Chief Secretary to the Government of Mysore. I make this affidavit as supplementary to the affidavit filed by the Deputy Secretary in the Public Works Department.

2. Para 9 of the Affidavit:

It is not a fact that the Petitioner ~~saw~~ met me on the 5th January 1961 as I was then on Casual Leave in Mangalore. He saw me, as far as I remember, on the 2nd January. I then told him that I had come to know that there were serious charges pending against him

Page No:1

corrections:

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Writ Petition No. 137 of 1961.

Between

H.N. Honnehigeh .. Petitioner.

and

The State of Mysore and another. .. Respondent.

Supplementary Affidavit.

I, H.M. Channabasappa, major, resident of Bangalore, do solemnly affirm and state as follows:-

1. I am the Home Minister in the Government of Mysore. I was Minister, Public Works and Electricity, during the relevant period. I make this Affidavit, dealing mainly with the allegations made concerning me, as supplementary to the Affidavit filed by the Deputy Secretary in the Public Works Department.

2. Paras 12 and 13 of the Affidavit:

It is true that Bandehally village is situated in the K.R.Nagar Taluk and I have been returned to the State Legislative Assembly, from the K.R.Nagar Constituency. It is also true that Shri Shivaveerappa is a resident of Bandehally village. It is true that some of his lands came under submersion by reservoir Bandehally Chikkahare.

No. of Corrections. ..The

The Government directed partial restoration of the tank to F.L. 43 and directions were issued to the petitioner that the work of restoration should be taken up as a Minor Irrigation Scheme and this letter was received in the office of the petitioner on 29-6-1959 and the petitioner also issued instructions to the Superintending Engineer and the Executive Engineer for taking necessary action. The petitioner also called for reports of the action taken by the subordinate officers by his letters dated 13-7-1959, 22-7-1959, 14-8-1959 and 3-11-1959. On 16-11-1959 he received the Executive Engineer's report stating that the estimate is sanctioned and tenders are invited. The petitioner, however, entertained a revision petition from Channaveerappa aforesaid on 23-11-1959 and I see from the records that he has made the following order on the same day:

> "D.E. K.R.Nagar to send a detailed note and files within 30th instant for passing orders - work should not be started till orders are received from F.C." (this office)

It is not true that he met me in my chambers on 23-12-1959. The records disclose that he met me on 23-12-1960. To the best of my recollection, the Stenographer was not present when the petitioner met me. The Deputy Secretary, P.W.D., was however present. It is false that I flew into a temper and shouted at him stating that the petitioner had stopped the work which he had been ordered to execute, or that I shouted in an angry tone that Channaveerappa, who had approached the petitioner, was my political

No. of corrections:

opponent in my constituency, and that I insinuated that the petitioner had acted in order to favour the Counsel who happened to be, to my knowledge, of his caste. Channaveerappa is neither a politician nor my political opponent. It is also false that any insinuation on the above lines was made and that the petitioner expressed surprise and stated that no motive could or should be ascribed to him. It is equally false that I told the petitioner "do you know you are dealing with fire" and that I accused him of dabbling in politics and that the petitioner refuted the accusations. The petitioner's allegation "I am not saying it now, I am collecting evidence against you" is false. It is also false to say that I did not listen to what he had to say in the matter, when in fact he had been called specifically to explain the position as Government had received a telegram and a petition alleging that he had stayed the Government Order.

What transpired at the meeting is correctly and fully set down below. When he came to my chambers, he was received with the usual courtesies. Then I asked the petitioner whether he was aware that Government had passed orders for the restoration of the tank. He said that he was aware of the Government Order and that it had also been communicated to him. I asked him whether had passed orders staying the execution of the work. He denied having made any such order and when he was shown the order that he had passed, he still contended that it did not amount to an order of stay. I then sent for the Secretary, Law Department, Sri R.P.Vasudev, and even in his presence the petitioner stated that he knew about the Government having ordered restoration of the tank and contended that it was only an administrative

instruction to his office...

No. of corrections:

office and not a stay order. Sri Vasudev looked into the order that had been passed and was of the opinion that it was clearly an order staying the execution of the work. It is significant that the petitioner has not referred to the presence of the Law Secretary in his affidavit. There was also some discussion as to whether the petition made by Channaveerappa would lie under Section 80 of the Mysore Irrigation Act. It was also noticed that the interim order had been passed by the petitioner even without insisting upon a certified copy of the order sought to be revised. The petitioner said that he would immediately dismiss the Revision Petition. Sri Vasudev stated that having admitted the petition, it would be appropriate to give a hearing to the counsel and then pass orders. I then told the petitioner that he may go and the matter would be looked into.

x Hulkaumalavva

It is however seen from the records that on 30-12-1959 alone he has issued a phone message and confirmed later by a letter to the Executive Engineer, Krishnaraja Nagar Division in the following terms:

> "Tenders for the restoration of Kandahally tank should be accepted and work started immediately and compliance reported" although he has made it appear on record that he has vacated the stay order after hearing arguments on 4-1-1960.

3. Para 13 of the Affidavit:

It is not correct to say that the petitioner has incurred any wrath for having done

No. of corrections:

Hulkaumalavva

duty any consideration duty. The Cabinet took a decis approving 36" main for augmenting water-supply to Banga city after considering all available technical advice i ing that of the Adviser to the Central Government. Whi taking the decision, the points of the petitioner was al taken into account. The Cabinet decision was conveyed t the petitioner for implementation. Instead of carrying out the orders of Government, the petitioner indulged in improper and undesirable correspondence criticising the scheme approved by Government as technically not sound and financially not economical. He even went to the ext of questioning how Government could take a decision for 3(main as against his advice, and wrote back to Government (ing that the estimate approved by Government "need not be sent to Government of India as it is not technically sound (Vide Petitioner's D.O.letter No.PC.C4 dated 31-3-1960 mar as Annexure). The details about the conduct of the Petiti(are set out in the Affidavit filed by the Deputy Secretary, P.W.D.

It is not correct to say that the conduct of the petitioner "upset" me. The petitioner's conduct was set ou in a letter dated 23-4-1960 issued by the In-charge Secreta to Government, P.W.D., and the explanation of the Petitioner was called for. I do not understand what the Petitioner means when he says that "for reasons best known to himself", I insisted on orders being placed for 36" pipes. The reason for the P.W.D.Secretary asking the Petitioner to place orders for 36" pipe is in accordance with the decision taken by the Cabinet. There was no question of my insisting upon placing orders for 36" pipes. The allegations of the Petitioner which are inconsistent and contrary to that is stated above are false and hereby denied.

4. From 27 of the Affidavit.

The Petitioner is not justified in characterising the action of the Government as perverse, vindictive and mala fide. I am advised that under Art. 163 of the Constitution

of the Constitution it is not permissible for me to disclose what advice was tendered by the Ministers to the Governor. I crave leave to refer to the contents of the counter-affidavits filed before this Hon'ble Court and the correspondence to show the justification for the action that was taken against the petitioner. I crave leave also to submit that the action that has now been taken is not final. Only an enquiry has been ordered and it is open to the petitioner to put-forth his case before the Inquiry Officer. Thereafter the latter's report will come up before Government for recording their findings. The inference drawn by the petitioner that the action is taken out of sheer caste prejudice on my part is erroneous. The allegations attributing communal bias and caste prejudice to me and that at my instance all sorts of charges are being levelled against the petitioner are absolutely unfounded. The Hydro-Electric Construction Project Board expressed its disappointment at the rate of progress of work achieved by him in the Sharavathy Valley Project and it was found that he was not able to cope with the work of that magnitude. Extracts from the proceedings of the meetings of the Hydro-Electric Construction Project Board (dated 23-1-1959 and 12-2-1959), which is an authority responsible for the execution of the project according to schedule are herewith produced and marked as annexures. The petitioner was transferred from the post of Special Chief Engineer, Sharavathy Valley Project, in the best

Interest

No. of corrections:

interest of that project and not on communal bias or caste prejudice as stated by the petitioner. The fact that one Sri K.C.Ramisamy Reddy has posted in his place belies what he has stated.

I may be permitted to mention that I am being returned to the House of Legislature on local Radion for the last so many years from Hosur, Periyapatna and Krishnarajanagar Constituencies in which Vokkaligar community is predominant. It is regrettable that the petitioner has chosen to import communal bias and caste prejudice where none exist, solely to serve his own ends in this Petition.

I have already set out that transpired at the interview on 22-12-1959. The allegations herein in regard to that interview are also denied. It is not correct to say that the basis for issuing the impugned order have arisen within a short period of four months from 22-12-1959. The impugned orders are due to acts of commissions and omissions on the part of the petitioner as amply disclosed in the counter-affidavits as well as the correspondence and other annexures to the affidavits.

It is not true that I insulted the petitioner by denying him Chief Engineer (General) place and lowered his prestige. The performance of the petitioner in the Hemavathy Valley Project was not satisfactory and he was found to be wanting in ability to maintain efficiency and discipline in the Project. It was on that account that he was transferred

from...

No. of corrections:

from the Sharavathy Valley Project. Government, in the circumstances, considered that it was not desirable to put him in charge of the entire establishment of the P.W.D. and decided in favour of Sri K.N. Joshi. It is not also correct to say that the Establishment should always be with the senior-most Chief Engineer. There have been cases where selection has been made of Junior Chief Engineer to be in charge of Establishment of the P.W.D. on grounds of administrative convenience, efficiency etc. To quote an instance, Sri Krishnaswamy Iyengar, retired Chief Engineer, was placed in charge of Establishment of the P.W.D. though there were seniors to him. I deny the other allegations herein.

5. Para 30 of the Affidavit.

It is false to say that I was determined to send the petitioner out with a black mark. The action that is being taken against the petitioner is in the ordinary course of administration. It is false to say that I got the Council of Ministers to pass orders for disciplinary proceedings and the order of suspension under the threat of resignation. The order of suspension is an order of the Chief Minister and not a Council matter under the Business Rules of Government. The petitioner's appointment as a Special Officer was made by the Chief Minister in exercise of the powers vested in him as the authority in charge of the General Administration (Services) and I had no reason to feel chagrined about it.

6. Para 31 of the Affidavit.

It is false that I held out a threat of termination to place him under suspension. It

is also false to say that I am acting in a mala fide manner against the petitioner. I have nothing personal against him. The Director of Anti-Corruption and Technical Audit Cell (P&D), functions in a quasi-judicial manner and takes his own decisions which he communicates to the Government. To say that I am the Prosecutor and the Judge is absolutely unfair and false. It is also unfair to the Director of Anti-Corruption.

7. All the allegations not admitted and not specifically traversed are also denied.

Dated at Bangalore this the sixth day of March 1981.

DEPONENT.

No. of corrections:

Sworn to before me.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Writ Petition No:137 of 61.

Between

M.H.Manchigiah. Petitioner

And

The State of Mysore and another. Respondents

AFFIDAVIT ON BEHALF OF RESPONDENT NO.1

I, R.J.Robello, major, resident of Bangalore, do solemnly affirm and state as follows:

1. I am the Chief Secretary to the Government of Mysore. I make this affidavit as supplementary to the affidavit filed by the Deputy Secretary in the Public Works Department.

3. Para 9 of the Affidavit:

It is not a fact that the Petitioner met me on the 5th of January 1961 as I was then on Casual leave in Mangalore. He saw me, as far as I remember, on the 2nd of January. I then told him that I had come to know that there were serious charges pending against him and that it was likely that pending enquiry he might be placed under suspension. I told him that I was not in favour of a Senior Officer having to be suspended and that my advice to him was that he should put in an application for leave till the date of his superannuation when he would normally retire from service. I am told him that in case such an application were received I

would do my best to see that no action was taken against him but that he be granted leave till the date of superannuation on full average pay for the whole period which I understood was about eight months, that is, two months more than what he would be entitled to under the Rules. The Petitioner became very excited and told me that he had done no wrong and that he had an honourable career and came from an honourable family and ever-since his boy-hood he had been wearing Khadi. He asked me not as Chief Secretary but as a friend to see that he was not placed under suspension. He told me that he was not at all prepared to go on leave and that he would fight out the matter if necessary. I informed him that I had only given him advice and it was for him to decide that course of action he should take. It is not true that I told the petitioner that if he did not apply for leave, he would be placed under suspension and charge-sheeted under the specific instructions of the Minister, P.W.D. The allegation of pressure is not true.

Bangalore,
6-3-1961.

DEPONENT.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Writ Petition No.137 of 1961.

Between

M.H. Manchigiah. Petitioner.

And

The State of Mysore and another. Respondents.

AFFIDAVIT ON BEHALF OF RESPONDENT NO.1.

I, B.D. Jatti, Major, resident of Bangalore, do solemnly affirm and state as follows:

1. I am the Chief Minister of the State of Mysore. I make this affidavit as supplementary to the affidavit filed by the Deputy Secretary in the Public Works Department and dealing mainly with allegations made concerning me.

2. Para 10 of the Affidavit:

It is not a fact that the Petitioner saw me on 5th January 1961. I left Bangalore on 3rd January 1961 in the noon for Bhavenagar after a Cabinet meeting in the morning. On the 5th January I was at Bhavenagar and returned to Headquarters on 11-1-1961 at 1 P.M.

The petitioner met me sometime before I left for Bhavenagar at about 10 P.M. at my residence. It is

Para No.1

Corrections:

not true that I asked him to go on leave. It is not true that he complained to me about the interview he had with the Chief Secretary or that any threat was given to him by the latter. It is not true that he told me of any harassment. It is not a fact that I expressed any regret or that I told the petitioner that the whole thing was caused by the P.W.D. Minister because of his not realising the legal implication.

When the petitioner met me he began to complain that his good work over a period of 30 years was not being appreciated and that he was apprehending some trouble. Then I told him that it was not proper for a senior officer of his status to approach me unless it be by way of an appeal against any order. I advised him to approach his own Minister in the first instance and submit what he had to say.

Para 13 of the Affidavit:

To the best of my recollection, I have not made any note as alleged by the petitioner. It is seen from the records that the following note has been made by me on 12-7-1959:

> "Chief Secretary may contact the Director for Mysore Iron & Steel Works and find out whether it is possible to supply the C.I. pipes according to the specifications mentioned in the Cabinet note. If not, can he suggest any other alteration."

It is also seen from the note of the Chief Secretary that this matter was discussed with the petitioner and the Secretaries in July 1959. It is not true that I instructed the Bhadravati Iron Works to manufacture 30" pipes. No order was placed with the Works for manufacture of

Page No.2

Corrections:

30" pipes. The matter whether 30" pipe or 36" pipe was to be laid was all along under consideration and the final decision was only taken on 20th January 1960.

3. The petitioner was posted on 19-1-1961 as Officer on Special Duty as a matter of administrative convenience since the Department of Commerce and Industries wanted an Officer with engineering knowledge and experience only for a short period of three months. He was selected as he had a short period of service to put in and could be conveniently shifted without serious dislocation to regular work.

4. The order of suspension against the petitioner was passed by me on merits in the usual course, as the Minister-in-charge of the General Administration. It is false to say that the Minister, P.W.D., held out a threat of resignation to the Council of Ministers.

Bangalore,)
6th March 1961.) DEPONENT.

Para No.2

Corrections:

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Writ Petition No.137 of 61.

Between

M.H. Manchigiah. Petitioner.

And

The State of Mysore and another. Respondents.

AFFIDAVIT ON BEHALF OF RESPONDENT NO.1.

I, B.D. Jatti, Major, resident of Bangalore, do solemnly affirm and state as follows:

1. I am the Chief Minister of the State of Mysore. I make this affidavit as supplementary to the affidavit filed by the Deputy Secretary in the Public Works Department and dealing mainly with allegations made concerning me.

2. Para 10 of the Affidavit:

It is not a fact that the Petitioner saw me on 5th January 1961. I left Bangalore on 3rd January 1961.in the noon for Bhavanagar after a Cabinet meeting in the morning. On the 5th January 11-1-1961 at 1 PM I was at Bhavanagar and returned to Headquarters on /

Page No.1

corrections:

The petitioner met me sometime before I left for Bhavanagar at about 10 P.M. at my residence. It is not true that I asked him to go on leave. It is not true that he complained to me about the interview he had with the Chief Secretary or that any threat was given to him by the latter. It is not true that he told me of any harassment. It is not a fact that I expressed any regret or that I told the petitioner that the whole thing was caused by the P.W.D. Minister because of his not realising the legal implication.

When the petitioner met me he began to complain that his good work over a period of 30 years was not being appreciated and that he was apprehending some trouble. Then I told him that it was not proper for a senior officer of his status to approach me unless it be by way of an appeal against any order. I advised him to approach his own Minister in the first instance and submit what he had to say.

Para 13 of the Affidavit:

To the best of my recollection, I have not made any note as alleged by the petitioner. It is seen from the records that the following note has been made by me on 12-7-1959:

> "Chief Secretary may contact the Director for Mysore Iron & Steel Works and find out whether it is possible to supply the C.I. pipes according to the specifications mentioned in the Cabinet note. If not, can he suggest any other alteration."

Page No.2

corrections:

It is also seen from the note of the Chief Secretary that this matter was discussed with the petitioner and the Secretaries in July 1959. It is not true that I instructed the Bhadravati Iron Works to manufacture 30" pipes. No order was placed with the Works for manufacture of 30" pipes. The matter whether 30" pipe or 36" pipe was to be laid was all along under consideration and the final decision was only taken on 20th January 1960.

3. The petitioner was posted on 19-1-1961 as Officer on Special Duty as a matter of administration convenience since the Department of Commerce and Industries wanted an Officer with engineering knowledge and experience only for a short period of three months. He was selected as he had a short period of service to put in and could be conveniently shifted without serious dislocation to regular work.

4. The order of suspension against the petitioner was passed by me on merits in the usual course, as the Minister-in-charge of the General Administration. It is false to say that the Minister, P.W.D., held out a threat of resignation to the Council of Ministers.

Bangalore,
6-3-1961.

DEPONENT.

Page No.3

Corrections:

Rotn. 8-12-57

P.W.D. 14.C.W.S. 5'8

"C-Secy may contact the Divn for M.P.S.W. and find out whether it is possible to supply the C.I pipes according to the specifications mentioned in the Estimate. If not, can he suggest any other alternative?"

B.D.J.
12.7.1957

4-3

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Writ Petition No: 137 of 61.

Between

M.H. Manchigiah. Petitioner

And

The State of Mysore and another. Respondents

AFFIDAVIT ON BEHALF OF RESPONDENT No.1.

I, B.D. Jatti, Major, resident of Bangalore, do solemnly affirm and state as follows:

1. I am the Chief Minister of the State of Mysore. I make this affidavit as supplementary to the affidavit filed by the Deputy Secretary in the Public Works Department and dealing mainly with allegations made concerning me.

2. Para 10 of the Affidavit:

It is not a fact that the Petitioner saw me on 5th January 1961. I left Bangalore on 3rd January 1961 in the noon for Bhavanagar after a Cabinet meeting in the morning. On the 5th January I was at Bhavanagar and returned to Headquarters on

corrections:

on 11-1-1961 at 1 P.M.

The petitioner met me sometime before I left for Bhavanagar at about 10 P.M. at my residence. He ~~told me that~~ he could not carry on his work as Chief Engineer since the P.W.D. Minister had certain prejudices against him. I told him that it was up to him to explain and satisfy the P.W.D. Minister and that he should not have approached me and complained about the Minister unless it was by way of appeal against any order passed by his Minister. I further told him that he was one of the Seniormost Officers and on the verge of retirement and that he should satisfy his Minister by explaining his case. It is not true that I asked him to go on leave. It is not true that he complained to me about the interview he had with the Chief Secretary or that any threat was given to him by the latter. It is not a fact that I expressed any regret or that I told the

thing was caused
ause of his not
ation.

collection, I have
ile that Bhadravati
ch of any reduction, I
n any such as alleged by
r. It is clear from the words
s he - made by me on

12-7-1959

It is also seen from the note of the Chief Secretary that this matter was discussed with the petitioner on ... in ... 1959.

3.

Bhadravati Iron and Steel Works, the State owned concern, can supply pipes "as per original Government Order. Why place orders with a private firm in Calcutta". ~~In the first place there was no Government Order placed with the Bhadravati Iron and Steel Works.~~ It is not true that I instructed the Bhadravati Iron works to manufacture 30" pipes. No order was placed with the works for manufacture of 30" pipes. The matter whether 30" pipe or 36" pipe was to be laid was all along under consideration and the final decision was only taken on 20th January 1960.

The petition was posted on 19-1-1961 as Officer on Special Duty as a matter of administrative convenience since the Department of Commerce and Industries would be an office with engineering knowledge & experience only for a short period of three months. He was selected as he had a short period of service left in his post in which he could be conveniently shifted without serious dislocation to regular work.

It is not correct to say that I had instructed the Bhadravati Iron and Steel Works to manufacture 30" pipes. I had only directed that enquiries may be made whether 36" pipes are available and whether the Mysore Iron and Steel Works could supply C.I. pipes according to the specifications mentioned in the Cabinet note, viz., 36".

~~The order of suspension was passed by me in the usual course, as the Minister in charge of the General Administration. It is false to say that the Minister P.W.D. held out a threat of resignation to the Council of Ministers.~~

Bangalore,
6-3-1961.

DEPONENT.

4. The order of suspension against the petitioner was passed by me on merits in the usual course, as the Minister in charge of the General Administration. It is false to say that the Minister P.W.D. held out a threat of resignation to the Council of Ministers.

corrections:

~~At that time~~ the
When the petitioners who were the
petitioners began to ~~complain~~
complain about the Minister
~~PWD had~~ I told that he
. . over a period of 30 years
good work, were not being
appreciated and that he was
apprehending some trouble on
that account. Then I told
him that it was not proper
for a senior ~~most~~ officer of his status
~~like him~~ to approach me
unless it be by way of
an appeal against any
order. I advised him to
approach his own Minister
in the first instance and
submit ~~appeal~~ which he had to say

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Writ Petition No. 137 of 1961.

Between

M.H. Manchigiah .. Petitioner

and

The State of Mysore and another .. Respondent

Supplementary Affidavit.

I, H.M. Channabasappa, major, resident of Bangalore, do solemnly affirm and state as follows:-

1. I am the Home Minister in the Government of Mysore. I was Minister, Public Works and Electricity, during the relevant period. I make this Affidavit, dealing mainly with the allegations made concerning me, as supplementary to the Affidavit filed by the Deputy Secretary in the Public Works Department.

2. Paras 12 and 18 of the Affidavit:

It is true that Bandahally village is situated in the K.R.Nagar Taluk and I have been returned to the State Legislative Assembly, from the K.R.Nagar Constituency. It is also true that Shri Chennaveerappa is a resident of Bandahally village. It is true that some of his lands come under submersion by restoring Bandahally Chikkakere.

No. of corrections:

The Government directed partial restoration of the tank to R.L. 48 and directions were issued to the Petitioner that the work of restoration should be taken up as a Minor irrigation scheme and this letter was received in the Office of the Petitioner on 29-6-1959 and the Petitioner also issued instructions to the Superintending Engineer and the Executive Engineer for taking necessary action. The Petitioner also called for reports of the action taken by the subordinate officers by his letters dated 13-7-1959, 23-7-1959, 14-8-1959 and 3-11-1959. On 16-11-1959 he received the Executive Engineer's report stating that the estimate is sanctioned and tenders are invited. The Petitioner however, entertained a revision petition from Channaveerappa aforesaid on 23-11-1959 and I see from the records that he has made the following order on the same day:

> "E.E. K.R.Nagar to send a detailed note and files within 30th instant for passing orders - work should not be started till orders are received from T.O."(this office)

It is not true that he met me in my chambers on 28-12-1959. The records disclose that he met me on 29-12-1959. To the best of my recollection, the Stenographer was not present when the Petitioner met me. It is false that I flew into a temper and shouted at him stating that the Petitioner had stopped the work which he had been ordered to execute, or that I shouted in an angry tone that Channaveerappa had approached the Petitioner, my political

No. of corrections: ....opponent

opponent in my constitutency, and that I insinuated that petitioner had acted in order to favour the Counsel who happened to be, to my knowledge, of his caste. Channaveerappa is neither a politician nor my political opponent. It is also false that any insinuation on the above lines was made and that the Petitioner expressed surprise and stated that no motive could or should be ascribed to him. It is equally false that I told the Petitioner "do you know you are dealing with fire" and that I accused him of dabbling in politics and that the Petitioner refuted the accusations.*

* The petitioner's allegation: "I am not saying it now, I am calling evidence against you" is false. It is also false to say that I did not listen to what he had to say in the matter; when, in fact, he had been called to explain the position as Govt had received a telegram on a petition alleging that he had stayed the Govt order.

What transpired at the meeting is correctly and fully set down below. When he came to my chambers, he was received with the usual courtesies. Then I asked the Petitioner whether he was aware that Government had passed orders for the restoration of the tank. He said that he was aware of the Government Order and that it had also been communicated to him. I asked him whether he had passed orders staying the execution of the work. He denied having made any such order and when he was shown the order that he had passed, he still contended that it did not amount to an order of Stay. I then sent for the Secretary, Law Department, Shri R.P. Vasudev, and even in his presence the Petitioner stated that he knew about the Government having ordered restoration of the tank, and contended that it was only an administrative instruction to his

No. of Corrections:

...office

office and not a stay order. Sri Vasudev looked into the order that had been passed and was of the opinion that it was clearly an order staying the execution of the work. There was also some discussion as to whether the petition made by Channaveerappa would lie under Section 52 of the Mysore Irrigation Act. It was also noticed that the interim order had been passed by the Petitioner even without insisting upon a certified copy of the order sought to be revised. The Petitioner said that he would immediately dismiss the Revised Petition. Shri Vasudev stated that having admitted the petition, it would be appropriate to give a hearing to the Counsel and then pass orders. I then told the Petitioner that he may go and the matter would be looked into.

It is true that the Petitioner rejected the Revision Petition before him on 4-1-1960 after hearing arguments. It is seen from the records that on 30-12-1959 a phone message from him has been sent to the Executive Engineer, K.R.Nagar, in the following terms:

> "Tenders for the restoration of Bandahally tank should be accepted and work started immediately and compliance reported."

3. Para 13 of the Affidavit:

It is not correct to say that the Petitioner incurred my wrath for

doing his conscientious duty. After Government had taken a decision to instal a 36" pipe he still persisted in the correctness of his advice to go in for 30" pipe and indulged in acrimonious correspondence with the Government and also criticised the Scheme approved by the Government as technically not sound and financially not economical. The details about the conduct of the Petitioner are set out in the Affidavit filed by the Deputy Secretary, Public Works Department.

It is not correct to say that the conduct of the Petitioner "upset" me. His conduct was set out in a letter dated 26-4-1960 issued by the in-charge Secretary to Government, P.W.D., and the explanation of the Petitioner was called for. I do not know what the Petitioner means to insinuate when he says that "for reasons best known to himself", I insisted on orders being placed for 36" pipes. The reason is obvious. It was in accordance with the decision taken by the Cabinet. There is no question of my insisting on placing orders for 36" pipes. The allegations of the Petitioner in this behalf are denied.

4. Para 27 of the Affidavit:

The Petitioner is not justified in characterising the action of the Government as perverse, vindictive and mala fide. I am advised that Under Art. 163 of the Constitution

of the Constitution it is not permissible for me to disclose what advice was tendered by the Ministers to the Governor. I crave leave to refer to the contents of the counter-affidavits filed before this Hon'ble Court and the correspondence to show the justification for the action that was taken against the Petitioner. I crave leave also to submit that the action that has now been taken is not final. Only an enquiry has been ordered and it is open to the Petitioner to put forth his case before the Enquiry Officer. Thereafter the latter's report will come up before Government for recording their findings. The inference drawn by the Petitioner that the action is taken out of sheer caste prejudice on my part is erroneous. The allegations attributing communal bias and caste prejudice to me and that at my instance all sorts of charges are being levelled against the petitioner are absolutely unfounded. ~~The decision is transfer is a Government decision and I may also submit that when~~ the Petitioner was transferred from the post of Special Chief Engineer, Sharavati Valley Project, ~~it was conceived~~ in the best interest of that project and the person who was posted in his place is Shri L.C. Muniswamy Reddy, who belongs to a sub-sect of the Vokkaligar community to which the Petitioner belongs.

(†) See Back

No. of Corrections:

I may be permitted to mention that I am returned to the Legislative Assembly from Krishnarajanagar Constituency which ~~is predominently a constituency of Vokkaligars. I must express my regret that to serve his ends in this particular petition,~~ the petitioner should have chosen to impart communal bias, caste prejudice where none exists.

The Hydro-Electric Construction Project Board expressed its disappointment at the rate of progress of work achieved by him and it was found that he was not able to cope with the work of that magnitude. Extracts from the proceedings of the meeting of the Hydro-Electric Construction Project Board (dated 13-1-1959 and 12-2-1959), which is an authority responsible for the execution of the project according to schedule are herewith produced and marked as annexures. I have already set out what transpired at the interview on 29-12-1959. The allegations herein in regard to that interview are also denied. It is not correct to say that 11 of the grounds which form the basis for issuing the impugned order have arisen within a short period of 4 months from 28-12-1959. The Petitioner contradicts himself when he says that eversince I

...assumed

No. of Corrections:

I assumed office I have been prejudiced against him. Acts of comission and omission on the part of the Petitioner as are amply disclosed in the counter-affidavits as well as the correspondence and other Annexures to the Affidavits.

It is not true that I insulted petitioner by denying him Chief Engineer (General) place and lowered his prestige. The performance of the petitioner in Sharavathy Valley Project was not satisfactory and he was found to be wanting in ability to maintain efficiency and discipline in the Project. It was on that account that he was transferred from Sharavathy Valley Project. Government, in the circumstances, considered that it was not desirable to put him in charge of the entire establishment of the P.W.D. and decided in favour of Shri K.M.Joshi. It is not also correct to say that the Establishment should always be with the Senior-most Chief Engineer. For instance, Shri Krishnaswamy Mudaliar was appointed as Chief Engineer (General) though there were persons senior to him. I deny the other allegations herein.

5. Para 30 of the Affidavit.

I deny that there is any discrimination on my part to send the Petitioner out with a black mark.

No. of Corrections: The

The action that is being taken against the Petitioner is in the ordinary course of administration. ~~The Petitioner is erroneous in believing that~~ It is false to say that I got the Council of Ministers to pass orders for disciplinary proceedings and the order of suspension and under the threat of resignation. The order of suspension is an order of the Chief Minister. ~~The~~ and not a matter for the Council of Ministers. administrative Ministers have no powers to keep the Head of a Department under suspension. The Petitioner's appointment as Special Officer was made by the Chief Minister in exercise of the powers vested in him as the authority in charge of the General Administration (Services). and I have no reason to feel chagrined about it.

6. Para 31 of the Affidavit:

It is ~~not~~ true that Government have appointed the Director of Anti-Corruption and Technical Audit Cell(PWD) to be specially empowered authority to frame charges against the Petitioner and to hold an enquiry against him. It is also false to say ~~not true~~ that I am acting in a mala fide manner against the Petitioner. I have nothing personally against him. The Director of Anti-Corruption and Technical Audit Cell (PWD), functions in a quasi-judicial manner and takes his own decisions which he communicates to the Government.

It is not true that I persuaded authorities to keep on the threat of resignation to place him under suspension

No. of corrections: ... To

To say that I am the Prosecutor and the Judge is absolutely unfair and ~~opposed to facts.~~ false It is also unfair ~~both~~ to ~~me and~~ the Director of Anti-Corruption.

The allegations are specifically denied as are ~~specifically~~ however also denied.

Dated at Bangalore this the Sixth day of March 1961.

DEPONENT.

No. of corrections.

Sworn to before me:

Cause for suspension

Mr Pelham has left to be
suspended because some of
his subordinates like "A"
& his own Deputy Chief Engineer
Joseph Engineer, Class and
Executive Engineers are to be examined
as witnesses in the Department
Enquiry

Charge I Barrelan was with

(2)(a) Khelli Date Lodha
6-6-1959

~~Fai~~

(b) Failure to attend
explain 18.11-1958
of Supdt. of Gondi Amin

(c) Settling contract
25-11-58

(d). Acquisition of 25 guntas
of land 19-5-59.

(e) Failure to explain date
21-1-1960.

(f) Failed to explain in
journey to Delhi 7-12-59

(3) Leave of absence. 7-12-59

(4) 9-9-59 circulars of Supdt
Mudgal circle.

(5) Failure to attend meeting
(a) 20-11-59.

(b) Bandelli 24-11-59.
Lodha

E. Works.

No. 331 P (Civil)

HIGH COURT OF MYSORE,

Bangalore, Dated 7-2-1961.

From

The Registrar,
High Court of Mysore,
BANGALORE-1

To Sri H.M. Channabasappa
Minister for Public Works &
Electricity, State of Mysore.

W.P. No 137 of 1961
on the file of the High Court of
Mysore, Bangalore.

Petitioner

Respondent

OFFICE OF THE MINISTER FOR PUBLIC WORKS
No. P.1.n.6.6.
8 FEB 1961
BANGALORE.

Hd
H.M. 9/2 Minister for P.W. & Electricity

I am directed to forward herewith notice in duplicate along with a copy of the petition and affidavit in the above case for service on you ..... and to request that the original notice may kindly be returned to this Court with due endorsement of service on or before the tentative date of hearing, viz. 16-2-61

Yours faithfully,

Mysuru
11 Dy Registrar. 2

Sri Kumar Ptg.-Press B'lore on behalf of the Govt. of Mys.—10,000-26-1959

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re 4
9/2
1961
-I
Department.
734 Pa 9/2

Notice to show cause.
General Form
Form No. 71. (Civil).

IN THE COURT OF _____ AT _____

SUIT No. _____ of 196 —196

_____ Applicant } vs. { _____ Opponent

To

Whereas the abovenamed _____ has made application to the Court that _____

You are hereby warned to appear in this Court in person or by a Pleader duly instructed on the _____ day of _____ 196 at _____ o'clock in the forenoon, to show cause against the application failing wherein, the said application will be heard and determined *ex-parte*.

Given under my hand and the seal of the Court, this _____ day of _____ 196 .

_____

WD 07617—GPB—1,500 pads of 100 shts. each—2-7-60

IN THE HIGH COURT OF MYSORE AT BANGALORE

(Memorandum of Writ Petition)

W.P. No. 137/1961)

UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Between

M.H. Manchigiah, son of Sri Home Gowda, Chief Engineer of Irrigation and Public Health, Bangalore, residing at No.94, Diagonal Road, Visveswarapuram, Bangalore-4 — PETITIONER

And

1. The State of Mysore by its Chief Secretary, Vidhana Soudha, Bangalore.

2. Sri H.H.Channabasappa, Minister for Public Works & Electricity, State of Mysore — RESPONDANTS

1. The address of the Petitioner for service of court's processes etc., is that of his counsel Sri S.K. Venkatarangiengar, Kanaka Mandiram, Gandhinagar, Bangalore-9.

2. The addresses of the Respondants are as given in the cause title above.

3. The Petitioner abovenamed prays that for the reasons contained in the accompanying affidavit this Hon'ble Court be pleased :-

i) to issue a writ of certiorari and/or any other appropriate writ, direction or order as the case may be calling for the entire records relating to Government Order No. GAD 8 SHD 61 dated 1-2-1061 (marked Ex. "A") and quash the same, ie., the order directing an enquiry and the order placing me under suspension;

ii) In the alternative, if this High Court feels that an enquiry may be held this court may be pleased to issue a Writ of Mandamus to the 1st Respondant to appoint a judicial officer to conduct the enquiry;

iii) to issue an ad-interim order of stay of the operation of the said impugned order pending disposal of this Writ Petition;

iv) to pass such other consequential orders including the award of costs of this petition.

Thus this petition is made this the 4th day of February 1961.

Advocate for Petitioner.

IN THE HIGH COURT OF MYSORE AT BANGALORE

(Memorandum of Writ Petition)

W.P. No. 137/1961

Between

M.H. Manchigiah,
son of Sri Hombe Gowda,
Chief Engineer,
Irrigation & Public Health,
Bangalore. } PETITIONER

And

The State of Mysore by its
Chief Secretary, Vidhana Soudhap
Bangalore-1, and another } RESPONDANTS

I, M.H. Manchigiah, s/o Sri Hombe Gowda, aged about 54 years, Hindu, residing at 94, Diagonal Road, Visvesvaraopuram, Bangalore-4, do hereby solemnly affirm and state as follows:-

1. I started service in 1929 in the Public Works Department and by hard and honest work I rose to occupy the highest position and was appointed Chief Engineer in 1958. During the years 1952-57 my services were lent to the City of Bangalore Corporation as its Engineer and my services were specially commended by the Corporation passing a resolution at their meeting dated 28-6-57. Thereafter I reverted back to the Public Works Department on promotion. From March 1958 to March 1959 I was Special Chief Engineer for Dharavathi Valley Project. In March 1959 I was appointed Chief Engineer, Irrigation & Public Health. I completed my 30 years of service in 1959. By a Government Order dated 19-1-1961 to which I will make more detailed reference hereinafter, I was appointed as the officer on Special Duty with State-wide jurisdiction in the grade of Chief Engineer for a period of 3 months to work in the Department of Industries and Commerce on account of number of public enterprise programmes such as the establishment of Industrial Estates launched by Government in the Industries and Commerce Dept. as on account of my appropriate engineering skill and administrative experience.

19-1-1961

2. From the 6th to 11th of January 1961 I was on an intensive tour of several Districts in the State and due to the strain of long journeys by jeep in the interior parts I developed back-ache in addition to the blood pressure I was having.

3. I had in order to recoup my health to take 6 days casual leave with effect from 16-1-1961. As my health did not improve and as I was advised treatment and rest for a further period of a fortnight I applied to the Government on 23-1-1961 for the grant of 20 days earned leave inclusive of the 6 days casual leave that I had already taken, forwarding the medical certificate of the doctor who was treating me and as I was physically unable to move I handed over charge of my office from my home to my Deputy Chief Engineer and requested the Government to approve of it, in view of the said circumstances.

4. Even as I was expecting to resume my duties on the 6th of February 1961 I was served with the accompanying Government Order in a cover marked 'Confidential' on 1-2-1961 at about 6-30 p.m. The said order which is hereinafter styled as the 'Impugned order' marked Exhibit "A" bears the same date 1-2-1961. The impugned order refers to alleged acts of commissions and omissions on my part on the basis of correspondence, referred to therein, that took place between me and the Government from 24-4-1958 to 21-5-60. The said order proceeds to state that disciplinary proceedings had been decided to be instituted against me and the Director, Anti-corruption and Technical Audit (PWD), had been appointed 'the Special Empowered Authority' to frame charges against me and hold an enquiry, in accordance with the provisions of Rule 11 of the Mysore Civil Service (Classification, Control and Appeal) Rules, 1957. The order further states that in view of the serious nature of the allegations levelled against me involving alleged defiance of Government orders, insubordination, inefficiency and indiscipline and that it was therefore necessary in the public interest that I should be placed der suspension forthwith pending enquiry, sistence allowance according to the rules being red to be paid to me during the period of iry.

5. Surprisingly enough while this order was meant to be and forwarded to me as confidential under a sealed cover, which is herewith filed marked Exhibit A-1 the Indian Express daily at issue of February 2nd, 1961, herewith filed marked Exhibit 'B' dated 2nd February 1961 published xkx as follows:-

> "PROBE INTO CHARGES AGAINST MYSORE OFFICIAL.
>
> From our Correspondant, Bangalore, February 1st.
>
> A spokesman of the State Government indicated here to-night that the Director of Anti-corruption and Technical Audit (P&D) be asked to inquire into some charges against Mr. M.N. Manchigiah, Chief Engineer for Irrigation & Public Health.
>
> Pending enquiry into the charges Mr. Manchigiah has been placed under suspension, it is reliably learnt.
>
> Mr. Manchigiah has been posted as Special Officer in the Industries & Commerce Department."

A similar version also appeared in the Kannada daily "Samyukta Karnataka" on 2-2-1961, marked Exhibit "C". In the Deccan Herald of 3rd February marked Exhibit 'D' the matter has appeared under the heading "Probe into Chief Engineer's conduct" and reads as follows:-

> "The Government of Mysore have appointed the Director of Anti-Corruption and Technical Audit, as the Enquiring Officer to go into the charges against Mr. M.N. Manchigiah, Chief Engineer for Irrigation and Public Health.
>
> The State Government in their order issued in Bangalore on Thursday have placed Mr. Manchigiah under suspension pending enquiry. The charges against Mr. Manchigiah are stated to be corruption and inefficiency."

6. I submit that in the setting of facts and circumstances which will follow herein-after the said order published in the above manner in several daily papers is an order passed malafide and constitutes an abuse of the power. It will be seen from the impugned order that the correspondence which is the basis for the order makes reference to two incidents of 1958, two incidents of 1959, 11 incidents of April 1960 ending with my reply dated 21-5-60.

7. The insinuations made in the impugned order are that I am involved in defiance of Government order, insubordination, inefficiency and indiscipline on charges that have yet to be framed based on correspondence which ended about 9 months ago, reveal the hollowness of the materials on which an enquiry has to be conducted calculated to somehow justify an order of suspension, calls for the interference by this Hon'ble Court even at this stage, as I am advised to submit, to save me from further harassment.

8. I have already put in 31 years and 3 months of service and the Note to Rule 285 of the Mysore Civil Service Rules, made in exercise of the powers conferred on the Governor by the proviso to Article 309 of the Constitution of India, entitles me to retire from service by giving 3 months notice to Government.

9. If the Government were not satisfied with my service record, on the completion of my 30 years of service by November 1959 they could have retired me from service under the said Rules As I had not given occasion for such an action to be taken efforts were made through the Chief Secretary to the Government who sent for me on or about 5th January 1961 to persuade me to apply for leave preparatory to retirement. The Chief Secretary stated that if I did not so apply for leave I will be placed under suspension and charge-sheeted under the specific instructions of the Minister, P.W.D.

I refused to submit to this pressure.

10. Within a few hours after that incident I had an interview with the Chief Minister and apprised him of the threat held out and the harassment caused to me and explained my position. The Chief Minister who showed sympathy and regretted that all this was being caused by the P.W.D. Minister because of his not realising the legal implication. He however advised me to somehow manage with the Minister and to go on leave if necessary. I told the Chief Minister that I was not prepared to take leave under these humiliating circumstances and under threats.

11. It is not without significance that subsequent to all this on 19-1-1961 Government passed the accompanying proceeding marked Exhibit 'E' appointing me with immediate effect to the post of an officer on Special Duty in the Industries and Commerce Department.

12. In this context I have to make reference to an incident which I make reference hereinafter when relating to item by item to the correspondence mentioned in the impugned order. In connection with my having passed an order on an application submitted to me through counsel under Section 52 of the Mysore Irrigation Act on behalf of one Patel Channaveerappa of Krishnarajanagar Taluk which is incidentally the very constituency which the Minister for P.W.D. is representing in the Mysore Legislative Assembly and he had passed an order for raising waste weir of what is known as Bandahalli Chikkakere the petitioners complaint being that the work was being hurried through submerging large extent of his lands without the Executive Engineer even informing him about the circumstances under which the restoration work was taken up. Even before this petition could be disposed of finally after calling for report of the Executive Engineer and hearing counsel the Minister for P.W.D. asked me on the phone to meet him at his chambers on 28-12-1959. When I went to his chambers as at 3 p.m. I found the then Deputy Secretary, P.W.D. and the Minister's Stenographer and the Minister in the room. Even before I took my seat the Minister flew into a temper and shouted at me saying that I had stopped the work which he had ordered to be executed. I tried to explain the circumstances in which I had acted on the Revision Petition but without listening to me the Minister shouted in an angry tone that the petitioner who had approached me was his political opponent in his constituency, i.e., Krishnarajanagar Taluk and insinuated that I had acted in order to favour that petitioner's counsel, who happened to be of my caste. I expressed surprise at this insinuation and stated that no motive could or should be ascribed to me. Without caring for my words the Minister shouted "Do you know you are

dealing with fire" and accused me that I was dabbling in politics. I stated that during all the 30 years of my service I had never been accused of dabbling in politics or favouritism and that such allegations should not be levelled against me. To that the Minister said "I am not saying it now, I am collecting evidence against you." I replied that I was sorry for the insinuation and returned to my office. Thereafter I issued notice to counsel and after hearing him rejecting the petition in the main on the ground that as the restoration work in the tank had been taken on the directions of the Government as ascertained from the records I had no power to interfere in revision. Even thereafter, the Government called for my explanation. Government's letter and true copy of my reply are being filed later while dealing item by item of the correspondence.

13. Similarly, in relationto another item relating to the purchase of pipes for the Triplicate rising main from the Bangalore Water Supply I incurred the wrath of the P.W.D. Minister for doing my conscientious duty. The circumstances that led to it are as follows:-

Government passed an order in 1958 for purchase of 30" diameter C.I. Pipes from Bhadravathi Iron & Steel Works for additional supply of water to Bangalore. . . . .

In May 1958 Government sanctioned in the same G.O. an estimate for Rs. 205 lakhs for arranging additional supplies of water from Tippagondanahalli to Bangalore City. In so sanctioning the estimate they had relied on the estimate prepared by my predecessor, who had recommended purchase of 30" pipes for the 3rd rising main. As central loan was to be had for the programme the estimate was sent to the Central Public Health Engineering Organisation for technical clearance. The central authority suggested after some correspondence that 36" diameter pipes could be laid for drawing 27 M.G.D. When the question of placing orders for purchase of 36" diameter pipes came up for consideration before the Cabinet and when the only firm that could supply the pipes was a Calcutta

firm, the Chief Minister noted on the file that when Bhadravathi, a State-owned concern can supply pipes as per original Government order why place orders on private firm in Calcutta for pipes. I assumed office in March 1959 as Chief Engineer for Irrigation and Public Health and in July the Chief Secretary to Government showed me the note by the Chief Minister regarding the conflicting recommendations of my predecessor in office and wanted me to send up a definite recommendation on verified data. I examined the whole case de-novo and reported that in view of 25MGD. (25 million gallons a day) being the maximum available water in Chippagondanahalli reservoir laying of30" pipes with an intermediate pumping station was quite adequate. I was asked to go to Delhi to convince the P.H.E.Organisation who had previously recommended the laying of 36" pipes, about the adequacy of 30" pipes. I flew to Delhi and was able to convince the PHE Organisation about the soundness of my recommendation. Thereupon after so cxxxxxxx convincing the Central Authorities I reported the matter to Government and sent an estimate for 210 lakhs. The estimate was referred to an ad-hoc committee which accepted my data relating to the maximum available water in the reservoir viz., 25 MGD but asked for making the same quantity available at Bangalore and not at Chippagondanahalli. Thereupon Government issued a letter to send an estimate for laying 36" pipes for making 25 MGD. available at Bangalore. I prepared an estimate on that basis which worked out to 255 lakhs. I also sent another estimate for 225 lakhs stating that for making 25 MGD. available at Bangalore 30" pipes were quite suitable and would result in a saving of 30 lakhs apart from patronising the State-owned Bhadravathi Works in preference to a private firm of Calcutta. This appears to have upset the Minister, P.W.D., who got a stringent letter issued to me accusing me of insubordination in sending up the alternate proposal which was to result in a saving of 30 lakhs, apart from the advantage of placing orders to the tune of Rs.1½ crores of rupees with State-owned Bhadravathi Factory. It was also learnt that on the basis of my proposal for laying 30" pipes the Chief Minister had instructed the Bhadravathi Works to manufacture 30" pipes and pipes worth nearly 3 lakhs had already been manufactured by February, 1960. In spite of all this the Minister, PWD., for reasons best known to himself insisted on my placing orders for purchase of 36" pipes with the Calcutta firm and accordingly orders were placed with the Firm at Calcutta by telegram. This stand of mine has been taken exception to by Government and has formed one of the grounds for issuing the impugned order on the ground of insubordination.

14. I crave leave to refer item by item to the correspondence which form the basis for the enquiry under the impugned order in order to convince this Hon'ble Court that the enquiry is a mere cloak to disgrace me and place me under suspension, there being no valid reasons whatsoever for starting any enquiry against me on vague and flimsy charges yet be framed. The first item relating to G.O.No.PA.176 dated 24-4-58 referred to matters that arose in the context of the Sharavathy Valley Project of which I was the Special Chief Engineer, between March 1958 and March 1959. That was replied to the very next day in my D.O.No.C.21 dated 25-4-58. As I do not have the records of that period with me I am unable to mention the subject matter of that correspondence. To the best of my recollection it related to the shifting of my headquarters from Bangalore to Kargal in the Project area.

15. Item No.2 referred to in letter No.PWD.344 GSS.dated 11-10-1958 was in respect of the revised estimate of a tank, which had been sent up by my predecessor in office as Chief Engineer (General). On my taking over charge as Chief Engineer, (I & P.H.), in March, 1959, I had to question the alternations made in the revised estimate and as a result of my probe into the revised estimate there was a saving of nearly 13,000/- to the Government. This probe necessarily involved a great deal of correspondence and the collection of records and evidence and the nearly 8 months taken for that after my assuming charge of that office was considered to be too long a time by the Government and the displeasure of Government was conveyed to me in their D.O.No.PWD.344 GSS.59 dated 27-9-60. My letter to the Government dated 8-4-60 in No.PC.6 with a note on the matter of the revised estimate andthe letter of Government dated 20-7-1960 expressing displeasure on the ground of delay are annexed hereto marked as Exhibits F & G.

16. The 3rd item refers to the progress of works during the first quarter of April 1959 in my office. The Government in their D.O.Letter No.PA.393 dated 11-9-59 passed stringent remarks on the alleged short progress in the matter of expenditure of funds in my charge. In my reply in D.O.No.A.3 dated 17-9-59 I explained as to how the new Department of Irrigation and Public Health was started on my assuming charge of the said department as Chief Engineer in March 1959 and the handicaps that I had to encounter in giving it a start and the anxious care that was bestowed in the matter of preventing needless expenditure. The Government do not appear to be satisfied with that explanation and that has been made one of the grounds for issuing the impugned order. The copy of my reply is annexed hereto marked EXHIBIT 'H'.

17. The 4th item relates to the calling for explanation from me for the alleged short progress under the National Rural Water Supply and Sanitation Scheme. In my replies in D.O.No.243 PH dated 24-11-59 and PC.36/29-2-60 I have explained the nature of the work and the cause for the time taken in going ahead with the scheme. Dissatisfaction with the reply has been made a ground for issuing the impugned order. The copies of 2 letters sent by me and referred to above are filed herewith as EXHIBITS 'J' and 'K', respectively.

18. The 5th item refers to the exercise of my revisory power under Section52 of the Mysore Irrigation Act regarding which I have made reference. One Patel Channaveerappa of Bandanalli village in Krishnarajanagar Taluk, presented on 23-11-1959 a revision petition through his counsel contending that the work of restoration of Bandahalli Chikkakere had been commenced, that the circumstances under which the/restoration work was taken up was not disclosed to him by the Executive Engineer, Upper Cauvery Division, in spite of his written request dated 21-11-1959 and that the restoration work which was commenced without observing the formalities of law was going to result in inundating large areas of highlands without conferring substantial benefit and that the action of Government as irregular, illegal and improper and would cause him irreparable loss and injury. He also sought a stay order pending consideration of the matter. As he had filed with the said revision petition the original endorsement issued by the Executive Engineer on 21-11-1959 regretting inability to inform him about the circumstances under which the restoration work was taken up I felt that there was a prima facie case for my interference under Section52 of the Irrigation Act. I therefore called for the report by 30-11-1959 from the Executive Engineer and issued a stay order pending consideration of the matter. The record called for was not received by 30-11-1959. Thereafter I was away in Delhi on official work till about the 25th December. On 28-12-1959 the Minister for PWD telephonically asked me to meet him at his chambers. I have referred to the incidents which happened there hereinbefore. Thereafter I issued notice to the counsel to immediately appear and argue the case but as he was not in town during the holidays the notices were not served. On He appeared and argued the case on 4-1-1960 and on the same day I rejected the petition as not maintainable on the ground that the restoration work of the tank was taken up on the directions of the Government as ascertained from the records and that I had no power to interfere in revision with the direction of the Government. The Government called for my explanation in the matter on 4-1-1960 in their D.O.No.PWD.154 GTC.59 and I replied in D.O.No.PJ.20 dated 20-1-60. The copies of the

said letter and my reply are annexed hereto marked as EXHIBIT 'L' and 'M'.

19. The 6th item relate to the rate for water supply to Hubli and Dharwar. The Government called for a report on the cost for supply of water to Hubli and Dharwar. The Government called for a report on the cost for supply of water to the two town on no-profit-no-loss basis. It involved a grant-in-aid by Government of more than 60 lakhs to the municipalities and therefore required careful preparation and scrutiny of records. It necessarily involved time and that has been made a ground for issuing the impugned order. Copy of letter from Government of 6-1-60 and my reply to Government in D.O.No.PC.19 dated 12-1-1960 are filed herewith as Exhibits 'C' and 'F'.

20. The next item No.7 related to the Nugali Project in Yarikera Taluk. My predecessor in office had furnished an opinion about it which I had forwarded. When my opinion was called for I investigatedthe whole matter in detail and furnished my opinion which was at variance with the opinion of my predecessor. The Government blamed me on the ground that I had furnished inconsistent opinions and called for my explanations. The letter of Government in D.O.No.PWD.66 GIS.59 dated 13-1-60 and my reply in D.O.No.PC.63 dated 31-3-1960 are annexed hereto marked Exhibits 'O' and 'R'.

19. The next item No.8 relating to the calling for explanation from the officers in charge of Gondi Anecut. After inspection of Gondi Anecut in November 1958 the Minister directed my predecessor in office to call for explanation from the officers in charge of the anicut for not attending to certain repairs. On assuming charge in March 1959 I ascertained fromthe Superintending Engineer that the repairs to the anecut had been subsequently attended to and the recommendation of the Superintending Engineer that one of the officers involved had been deputed to Madras Service and another had been k admitted to hospital for cardiac trouble and that in view of that the enquiry may be dropped, was forwarded by me to Government for favourable consideration. Even this is one of the grounds for issuing the impugned order. The copy of the letter of Government issued in D.O.No.PWD.205 .IS.58 dated 21-6-1960 is annexed to and marked Exhibit 'S'.

20. Next item No.9 relates to the strained relationship between me and one of my subordinate officers. The letter of Government in D.O.No.PA.105 dated 10-3-60 and my reply in D.O.No.P[illegible].17 dated 30-4-1960 explained my

position are annexed hereto as Exhibit 'S' and 'U'. This subordinate officer incidentally happened to be the son-in-law of an Ex-Minister.

21. The next item No.10 relates to the alleged delay in settling the claim for compensation to one Shri C.Raghunathacharya. The matter involved consideration of the basis for granting compensation and in order to avoid dangerous precedents in such land acquisition matters, I had to get all the relevant records and send up my recommendation in the best interests of the public funds. The letter of Government D.No.PWD.234 SMS.57 dated 25-11-58 and my letter dated 30-4-60 in No.1243 PH are annexed hereto marked Exhibits 'V' and 'W'.

22. The next item No.11, relating to the purchase of pipes for the triplicate raising mains for the Bangalore Water Supply has been already dealt with. The letter from Government dated 10/14-3-1960 in D.O.No.PA.107 and my comprehensive reply in the matter dated 7-5-1960 in D.O.No.PC.20 are annexed hereto marked Exhibits 'X' and 'Y'.

23. Item No.12, relates to acquisition of 23 guntas of land in Kyrasandra village and the alleged delay in settling the claim of the party for compensation. The party had claimed Rs.33,000/- for 23 guntas of unused stone quarry and it did take a few months time to ascertain the basis of this claim and recommend the granting of compensation at the rate of Rs.6,000/- per acre. The letter of Government in D.No.PA.113 dated 15-3-1960 and my reply in No.1244/PH dated 21-5-60 are annexed hereto marked Exhibits 'Z and Z-1".

24. Item No.13 alleges my failure to attend a meeting called for by the Secretary, PWD to discuss the plan programmes on 20-10-1959. The circumstances necessitating my absence are made out in my reply dated 25-4-1960 in D.O.No.PC.14 to the D.O.No.PA.103 dated 16-3-1960 sent by Government. The said letter of Government and my reply are annexed hereto as Exhibits A-2 and A-3.

25. The next item No.14, relates to the unauthorised construction of a bund across the waste weir of Nagarkere tank by the villagers. The Government in their D.No.PA.181 dated 28-4-1960 asked me to forward the explanation of my subordinate officers in respect of the said unauthorised construction of the bund by the villagers within 3 days of the receipt of their explanations. I received their explanations on 10 and 12 of May 1960 and forwarded my report on 17-5-1960 in my D.O.No.PC.23. Presumably the delay of 2 days in sending my report has been construed as the 14th ground for issuing the impugned order. The letter of Government and my report are annexed hereto as Exhibits "A-4 and A-5".

26. The last item No.15, relates to my journey to Delhi for arranging exhibits on Minor Irrigation Works in the World Agricultural Fair. The letter of Government dated 9/11-1-1960 in D.O.No.PA.11

and my reply in D.O.16 dated 30-4-1960 are annexed hereto as Exhibits A-6 and A-7.

I crave leave to refer in particular to the true copies of the accompanying letters dated 7-4-1960 and 18-4-1960 to the Secretary, P.W.D. marked marked Exhibits A-10 and A-11 ~~marked~~ wherein I had, while repudiating the charges made and definitely averred on the materials that I was being wilfully subjected to needless harassment. After these replies there was no further letter from Government of that nature and I felt that there was really an appreciation of the correctness of my stand.

27. The correspondence referred to above will clearly indicate the perverse, vindictive and malafide attitude of the Government taken at the instance of the Minister for PWD. against me ever since he assumed office of the Minister for the PWD. portfolio in May 1958. I have an unblemished record of service over a period of 30 years and it is only since the assumption of office of Minister, PWD. by the present Minister that all sorts of charges have been levelled against me. Even in those matters where I have effected considerable savings to Government I have been found fault with. I have no option but to infer that my transfer from Sharavathi Project and the positive encouragement given to my subordinate officer in complaining against me direct to Government as noted in the correspondence relating to item No.9 of the preamble to the impugned order, was made out of sheer caste prejudice on the part of the Minister, PWD. It is the same prejudice that made the Minister misconstrue my action taken in the exercise of my powers under Sec.52 of the Irrigation Act referred to in item No.5 above and accused of favouritism and dabbling in politics in a matter which was purely of a quasi-judicial nature. In taking such an attitude the Minister appears to have acted with even communal bias. It is that attitude again that made him conduct in such a violent and undignified manner when I was asked to see him in his office on 28-12-59 and warn me that he was going to collect evidence against me. The Minister was determined to harm me and it is with that purpose that he has tried systematically and relentlessly to spell out charges against me for anything and everything that I have done and give a mischievous turn to even the best of things, that I could do in the interests of the State. It is significant that 11 of the grounds that form the basis for issuing the impugned order have arisen within a short period of 4 months from 23-12-1959 the date on which the said interview took place and threat held out to me. Not being content with merely framing charges the Minister deliberately insulted me by denying me the charge of the Chief Engineer (General) to

which I was entitled by virtue of my seniority and recommendations of the P.W.D. Re-organisation Committee (Page 78) that the seniormost Chief Engineer should be in charge of establishment. The post which was due to me and which I held concurrently for 15 days in the normal course was given to a junior officer who was my subordinate for 2 years. He has thereby lowered my prestige in the eyes of my colleagues and departmental staff. The correspondence relating to the deprivation of the post that was legitimately due to me is annexed hereto marked as Exhibits A-8 and A-9.

28. I have had to submit in great detail filing also the correspondence that has taken place between me and the Government referred to in the order which I am herewith filing, which I crave leave to call as the impugned order, passed by the Government on 1-2-61 stating that Government had appointed the Director of Anti-corruption as Enquiry Officer to probe in respect of alleged acts of commission and omission referred to in the correspondence which they have named in the order.

29. There has been a systematic attempt to somehow belittle me and insult me by addressing letters either through the Secretary, P.W.D. or Deputy Secretary, P.W.D., taking exception to my conduct when I least deserved the same and I had necessarily to say so in the course of my reply. ~~xx~~ To mention a small instance which was made the occasion for magnifying in order to make stringent remarks against me a letter to which my signature had to be taken but had been omitted to be taken and despatched to the Secretary, PWD., as if it was my signed letter. I had to point out in my reply that I did not merit stringent remarks on an incident to which as the Head of the Department having numerous duties, I could not attend to or in the nature of things attend or rectify unless my attention was brought to such an incident. I had also in this connection to enclose a letter received from the Secretariat unsigned in order to show by comparison that such mistakes which occur in the stress and strain of a department's working deserved not to be taken notice of. In another instance my explanation was called for, on vague allegation that I was in the habit of stopping works.

30. I am reliably given to understand and believe the same to be true that the Minister, PWD., felt chagrined that Government had passed orders referred to above on 19-1-1961, posting me as Special Officer in view of engineering skill and administrative experience, when he was somehow determined to send me out with a black mark. On or about the 13th of January 1961 he is stated to have passed orders asking that I should be kept under suspension and had asked that this order should be communicated to me and to his regret the Council of Ministers had passed the Government Order of 19th January, 1961. The present impugned order is a climax which I have reasons to believe he got the Council of Ministers to pass under threat of his resignation.

31. During the period I was on leave Government had taken a decision in respect of my service and the same was communicated in their order No.CAD.5 SHD.61 dated, Bangalore, 19-1-1961 referred to above, and in view of my engineering skill and administrative experience, placed me on special duty with State-wide jurisdictin. This is clear proof of the realisation on the part of the Government which was holding out threats and bringing pressure on me to take leave that their stand was arbitrary and illegal. Being unable to take any action against me by way of punishment they placed me in this newly created post of Officer on Special Duty. I have reasons to believe that this decision, which really has the effect of humiliating me by requiring me to assist an officer of an equal or lower rank than myself, was taken only to deny me an opportunity of challenging it in a court of law. Not being satisfied with the humiliation so caused to me by depriving me of my substantive rank the Minister for P.W.D. has prevailed on the Government under threat of resignation to issue the impugned order placing me under suspension. This order which places me under suspension was issued on 1-2-1961 while I was actually on leave and had handed over the charge of my duties to my deputy. This act of suspending me from duty when I was actually not in charge of my duty has been done with the malafide intention of spiting me.

32. The impugned order suspending me from service after I had completed 30 years of service is also illegal apart from being bad for want of bonafides. The charges levelled against me are alleged to involve defiance of Government orders, insubordination, inefficiency and indiscipline. There is not even a remote suggestion of corruption or any kind of moral turpitude. In such a circumstance the only course open to Government was to retire me from service as provided for under Article 285 of the Mysore Civil Service Rules. In not so conforming to the said rule and in placing me under suspension and ordering an enquiry the Government have only tried to blacken my reputation built over a period of 30 years as an honest and efficient officer. The Minister for P.W.D. is impleaded as the second Respondent as in any event he would be a proper if not a necessary party to this proceeding having regard to the allegations made ~~x~~ herein.

33. In view of the explanations offered from time to time in respect of each of the 15 references it is passing strange that these have been made the basis of a set of charges which have not been communicated to me in that form before or a preliminary enquiry according to rules had been held where evidence has been collected to make out a prima facie case to warrant an order of suspension. This clearly shows that the order of suspension is pre-planned without proper investigation and based on malafide motives. The impugned order is directly in contravention of the procedure prescribed under Rule 11 of the Mysore Civil Service Rules detailed under G.O. No. GAD (CS) 5 CAR 57 dated 12-12-1957 and is void and void ab-initio and as such liable to be quashed.

34. The impugned order appoints the Director of Anticorruption and Technical Audit (PSD) to be the Specially Empowered Authority to frame charges against me and to hold an enquiry against me. The Minister for P.W.D., who, in my humble submission, is acting in a malafide manner with a view to humiliating and harming me, is the person in charge of the Anti-Corruption portfolio of Government. In the circumstances narrated hereinbefore, I cannot expect ex any impartial approach from the said Director of Anti-Corruption, who functions directly under the prejudiced and interested Minister. It would virtually amount to the Prosecutor being the Judge himself and it is opposed to all canons of natural justice. I therefore submit that if at all an enquiry is warranted it should be done by a responsible judicial officer who will not be amenable to any sort of influence from the Government.

35. The impugned order deprives me of a substantive post at the fag end of my unblemished official career and causes me irreparable injury and humiliation.

36. I have no remedy available to me under the law except to invoke the exercise of the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution. I have come to this Hon'ble Court as expeditiously as I could under the circumstances of the case.

37. The respondants are within and subject to the jurisdiction of this Hon'ble Court.

38. I therefore most humbly submit that it is necessary in the interests of justice that this Hon'ble Court is pleased to grant me the reliefs sought for in the petition.

Thus this affidavit is made this the 4th day of February, 1961 at Bangalore.

Deponent.

Identified by me.

Advocate.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Writ Petition No: 137 of 61.

Between

M.H. Manchigiah. Petitioner

And

The Stateof Mysore and another. Respondents

AFFIDAVIT ON BEHALF OF RESPONDENT NO:1.

I, R.J. Rebello, major, resident of Bangalore, do solemnly affirm and state as follows:

1. I am the Chief Secretary to the Government of Mysore. I make this affidavit as supplementary to the affidavit filed by the Deputy Secretary in the Public Works Department.

2. Para 9 of the Affidavit:

It is not a fact that the Petitioner saw me on 5th January 1961 as I was then on Casual Leave in Mangalore. He saw me, as far as I remember, on 2nd January. I then told him that I had come to know that there were serious charges pending against him

corrections:

him and that it was likely that pending enquiry he might be placed under suspension. I told him that I was not in favour of a Senior Officer having to be suspended and that my advice to him was that he should put in an application for leave till the date of his superannuation when he would normally retire from service. I told him that in case such an application was received I would do my best to see that no action was taken against him but that he be granted leave till the date of superannuation on full average pay for the whole period which I understood was about eight months, that is, two months more than what he would be entitled to under the Rules. The Petitioner became very excited and told me that he had done no wrong and that he had an honourable career and came from an honourable family and ever-since his boy-hood he had been wearing khadi. He asked me not as Chief Secretary but as a friend to see that he was not placed under suspension. He told me that he was not at all prepared to go on leave and that he would fight out the matter if necessary. I informed him that I had only given him advice and it was for him to decide what course of action he should take. It is not true that I told the petitioner that if he did not apply for leave, he would be placed under suspension

corrections:

suspension under the specific instructions of the Minister, P.W.D.

Bangalore,
6-3-1961.

DEPONENT.

corrections:

MATERIAL FOR COUNTER AFFIDAVIT to Para 13.

The facts pertaining to the statements made by the petitioner (CE, I&PH) are as follows:-

1) The petitioner's statement that he incurred the wrath of the Public Works Minister for doing his conscientious duties is deliberately false. The Public Works Minister had no reason to become wrathful against the petitioner for doing his duties conscientiously. On the other hand, he would be most happy.

2) The petitioner has said that the Government issued a letter to send an estimate for laying 36" main for making 25 MGD available at Bangalore, and accordingly he prepared an estimate for Rs. 255 lakhs. He avers that he sent another estimate for Rs. 225 lakhs stating that for making 25 MGD available at Bangalore using 30" pipes are quite sufficient for the purpose and would result in a savings of Rs.30 lakhs apart from patronising the State owned Bhadravati Iron works in preference to private firms at Calcutta. He further adds that this appears to have upset the Minister for P.W. who got a stringent letter issued to me accusing me of insubordination in sending up an alternative proposal which was to result in a saving of Rs. 30 lakhs apart from the advantage of placing orders to the tune of Rs. 1½ crores with the State-owned Bhadravathi factory....." He has also added that the Chief Minister had instructed the Bhadravathi Works to manufacture 30" pipes and that pipes worth nearly Rs. 3 lakhs had already been manufactured by February 1960 and that inspite of all this, the Minister for Public Works and Electricity, for reasons best known to himself, insisted on me for placing orders for purchase of 36" pipes with the Calcutta firm, and accordingly orders were placed with the Firm at Calcutta by telegram." This statement of the petitioner are gross distortion of facts.

3) The petitioner has distorted facts which are as follows:-

(a).....

(a) The question of augmenting water-supply from Thippagondanahalli to Bangalore City is pending from 1958:

(b) The estimate for Rs. 205 lakhs was administratively approved in Government Order No. PWD 14 CWS 58 dated 12/15th May 1958 for 30" triplicate main and the Chief Engineer was requested to take action to place orders for 30" pipe after the Central assistance becomes available;

(c) This scheme was sent to the Government of India.

(d) The Deputy Director-General of Public Health Engineering, Govt. of India, examined the same and said that the proposal of Rs. 30" pipe is uneconomical and that the balance of advantage would lie in favour of 36" pipe-line.

(e) The Chief Engineer re-examined the question in the light of the Govt. of India's suggestion and he referred the matter to the Ad hoc Committee for considering the question of long-range water supply scheme appointed by the Government for assessing:

(i) the maximum assured water-supply that would be available; and

ii) the most economic size of the pipe for the third main.

(f) The Committee, after examining the relevant statistics opined that the maximum water that could be assured at Bangalore from Thippagondanahalli would be 25 MGD. Regarding the size of the pipe-line and the number of stages of pumping etc. the committee left it to the Chief Engineer.

(g) The Chief Engineer further examined the matter. After discussing the question of economic size of the pipeline with the Govt. of India officer he decided upon the 36" main. An estimate for Rs. 2.5 crores for 36" main was sent to the Govt. of India in February 1959 for technical clearance and allotment of funds - Vide C.E's D.O. No. 19555-60 dated 23-2-1959.

(h) When the Cabinet note was put up to the Chief Minister he desired that the Chief Secretary should contact the Director Mysore Iron and Steel Works and find out whether it would be

be possible for the M.I.S.W. to supply the pipes according to the specification mentioned in the Cabinet note and if not, to suggest an alternative.

(i) It was ascertained from the Mysore Iron and Steel Works that they can only supply 30" and 27" pipes.

(j) The Chief Engineer (I&PH) i.e., the petitioner was asked to go into the question.

(k) After preliminary examination, the petitioner (CE I&PH) submitted a technical memoranda proposing combination of 27"/30" pipes for pumping 7.7 MGD.

(l) According to his proposal, the supplies from all the three mains would be as follows:-

1st main of 24" and 2nd main of 30"/27"	15.37 MGD.
3rd main of 30"/27"	7.70 "
Total:	23.43 "

~~(m) The petitioner says in his affidavit that he convinced the Govt. of India officers on the merits of 30" pipes. This is not correct. The reading of the Dy.Director of Public Health Engineering, Govt. of India indicates that the CE has not convinced him. The letter of the CE is also indicative of the fact~~

(m) This was discussed with the Chief Engineer at Secretariat level and in view of the difference in opinion between the Govt. of India officers and the previous Chief Engineer on the one side and the petitioner on the other the former being in favour of 36" and the latter 30", the petitioner was asked to go to Delhi and discuss with the Govt. of India officers on the merits of his new proposal.

(i) Before going to Delhi, the petitioner sent his Technical note to the Dy.Director of Public Health Engineering who after studying wrote back saying that he is in favour of 36". He sent a telegram that his coming to Delhi is not necessary.

(ii) However, the petitioner went to Delhi and discussed with the Dy. Director of Public Health Engineering.

(iii)...

(iii) The petitioner says in his affidavit that he convinced the G.O.I. officers on the merits of 30" pipe. It is not correct. The reading of the Dy. Director of Public Health Engineer, Govt. of India, indicates that the C.E. has not convinced him. The letter of the C.E. is also indicative of the fact.

(n) On return from Delhi, the petitioner submitted an estimate for Rs. 2.1 crores for 27"/30" pipes to pump 7.7 MGD.

(o) According to him, the maximum water-supply that could be drawn fromTGHalli reservoir was only 25 MGD and the balance available for being pumped is only 7.62 MGD as follows:-

Total available is	25.00 MGD.
Less that could be pumped from 2 Mains.	15.73 "
	9.27
Less Treatment Units,etc.	1.65
	7.62 or 7.7 MGD.

(p) The basic factor is the maximum water available for supply. The economic size of the pipe is directly linked with this.

~~(q) The Chief Engineer has varied the figures at different times. It was,therefore referred to the Ad Hoc Committee. This was discussed at the Meeting of the Ad Hoc Committee held on 12-11-1959 under the chairmanship of the Secretary to Govt. L.S.G. & P.H.Department.~~

(r) It is seen from the proceedings of the Committee, that all the technical members of the Committee expressed themselves in favour of 36" main as the economic size for utilising the average quantity of 25 MGD that would be available for supply at Bangalore.

(s) According to one of the most senior technical members, viz. Sri Narasinga Rao, the reservoir is even capable of supply-

ing upto 30 MGD in most of the areas.

(t) The Member was also of the opinion that if on an average 25 MGD is to be delivered at Bangalore, the supply mains should be capable of taking larger quantities, the great peak load demand, transmission losses, provisions for break-downs, etc.

(u) The Petitioner (C.E. &. & P.H.) also attended the meeting on invitation and participated in the discussions.

(v) The matter was then placed before the Cabinet, and the points for determination were:

i) balance quantity of water-supply available for being supplied to Bangalore from Thippagondanahalli Reservoir;

ii) to what extent the marginal capacity has to be provided for in the triplicate main to maintain an average supply; and

iii) the size of the pipes for the triplicate main.

(w) The size of the pipe will depend on the decision of the first two points.

(x) In regard to the first two points, the following differences of opinion exist:

i) according to the petitioner, only 25 MGD is available at the Reservoir;

ii) Deducting 15.73 MGD that is being pumped in the first two mains and 1.56 MGD for absorption in the installations, etc. the balance available would be 7.7 MGD.

iii) According to technical members of the Ad Hoc Committee, the total average quantity available is 25 MGD ~~xxxxxx~~ at Bangalore making provision for all contingencies like absorption,etc. The balance that would be available after deducting 15.73 MGD that is being pumped by the first two mains would be 25 MGD minus 15.73 MGD = 9.27 M.G.D.

iv) The petitioner (CE. I. & P.H.) raised a point of difference on the interpretation of the resolution of the Ad-Hoc Committee regarding the point at which 25 MGD would be available.

v) This was again referred to the Ad Hoc Committee which affirmed its previous decision that 25 MGD would be available on an average at the supply point viz. at Bangalore and that 9.27 MGD will be available for delivery at Bangalore on an average.

vi) The Ad-Hoc Committee were further emphatic that there should be 25 to 30% extra capacity to provide for break-down,peak-loads and other emergencies.

vii) According to them, provision will have to be made for 9.27 MGD plus 25% of 9.27 MGD. = 11.59 M.G.D.

y) After examining the proposals and advice of the petitioner (C.E. I. & P.H.) on the one side and the proposal and advice of the Deputy Director-General of P.H.E., Govt. of India and the

technical members of the Ad Hoc Committee for Bangalore water supply and of the previous Chief Engineer on the other side, the Cabinet accepted the recommendations of the latter and approved the 36" main at its meeting on 20-1-1960.

z) This decision was communicated to the Government of India in letter No. PWD 14 CWS 58 dated 27-1-1960 asking for immediate sanction and necessary central assistance.

aa) A copy of the letter was also sent to the Petitioner (C.E.I& P.H.) with the following directions:--

"The estimate got up for Rs. 250 lakhs for 36" main may please be sent immediately to the Deputy Director-General, Govt. of India for attending to his technical comments and the necessary technical clearance obtained urgently. The report of action may be reported to Government within a week."

bb) When once the Cabinet has taken a decision on this disputed question after considering the advise of all technical agencies available including that of the petitioner regarding the size of the pipe for the III Main, etc., the duty of petitioner (C.E.I&P.H.) is to faithfully carry out the orders of Government.

cc) The petitioner was directed in Govt. letter No.PWD 14 CWS 58 dated 27th January,1960 to forward immediately the estimate for 36" main to the Government of India and to report the action taken within a week.

dd) The petitioner did not carry out the orders as desired.

ee) Reminders were sent.

ff) After a lapse of about a month, the petitioner sent up an estimate for Rs. 255 lakhs accompanied with a detailed note and statement,etc. for 36" pipes in his D.O.No.PC 34-5 dated 24th February 1960 again raising the old controversy about the pipes.

gg) In this letter and its enclosures, he has made certain observations which are of interest:-

"From the preceding chapters, it will be seen that after the completion of Rs. 255 lakhs which provides for 30" pipes for the duplicate main, now forwarded to Government it will be possible to secure a total maximum of 25 MGD at Bangalore. As such, there is no necessity for using 36" pipe which is not an economical size. The estimate which is prepared as per instructions contained in PWD Secretary's letter dated 27-1-1960 for Rs. 255 lakhs and sent now need not be taken into consideration and returned to records in this office. It is unfortunate that though Government have been anxious to provide additional water-supply and have sanctioned an estimate as long back as 1958 and though

this office has requested Government to pass orders as far back as 13th May 1959 regarding placing of orders for C.I.pipes with the Bhadravathi Iron Works, no orders were issued."

hh) It is significant to note that although Government, after due consideration of the advice available including that of the petitioner, took a decision in favour of 36" main, it is surprising to note that the Chief Engineer (the petitioner) should instead of implementing the orders write back to Government to say that this scheme approved by Government ~~[illegible]~~ "is unecpnomical, and that it need not be taken into consideration at all and returned for record in his office".

ii) Subsequently, formal orders were issued on 16-3-1960 giving administrative approval to the estimate of Rs. 255 lakhs for 36" main.

jj) The estimate was approved in the Government Order and returned to the Chief Engineer for further action.

kk) Instead of carrying out the instructions as required in Govt. Order, it is surprising to note that the petitioner returned the estimate back to Government along with an alternative estimate for 30"/27" repeating his old arguments and referring to all kinds of extraneous, unwarranted and irrelevant matters.

11) What is most objectionable and surprising is that the petitioner should go to the extent of recording on the facing-sheet of the Estimate of 36" main approved by Government as "not economical financially and technically not sound" thereby indicating the impertinence and defiance of Government orders besides subversion of Government's interests. The pasting of adverse comments on the estimate approved by Government amounts to wilful act on the part of the Chief Engineer to discredit Government's sense of judgment.

mm) In the letter accompanying the two estimates he has made certain remarks which amount to gross indiscipline, insubordination and disrespect to Government.

nn) The following are the extracts from his letter dated 31-3-1960:-

(a) "When as per the accepted technical principles, the most economical size etc ..... It is not understood how the Governme have fixed the size as 36" etc.

(b) "In this connection I may be permitted to stress that this estimate for Rs. 255 lakh which is not an economical estimate need n be sent to the Govt. of India as it is not technically sound, etc."

oo) It is on this background and on the omissions and commissions of the petitioner that Government have called upon him to explain his conduct.

pp) It is false to say that the Minister for Public Works was got upset as he has sent two estimates - one for 36" main

and the other for 30" main etc.

qq) It is also false to say that the Minister for Public Works and Electricity insisted for placing orders for the 36" pipe. Cabinet's decision has to be carried out by the Chief Engineer.

MATERIAL FOR COUNTER AFFIDAVIT

TO PARA 30.

It is not true to say that the Minister for Public Works and Electricity chagrained that Government has passed orders referred by the Petitioner and dated 19-1-1961 posting him and there is no reason for him to be some-how determined to send the Petitioner out with a black-mark.

It is also not true that on or about the 13th of January 1961, that the Minister PWD, passed orders suspending the Petitioner. It is also not true that the Council of Ministers had passed the Government Order dated 19-1-1961. It is also not true that the Council of Ministers passed the impugned order under threat of Resignation and it is not a subject for Council of Ministers under the Rules of Business.

The facts of the case are as follows:-

The Chief Minister passed orders sanctioning two posts, one for assisting the Director of Industries and Commerce and assessing the progress under Industrial Estates, and the other, to help expediting programmes under irrigation wells in the Revenue Department.

The proposal to keep the petitioner under suspension went to the Chief Minister in the usual course and orders were issued on the merits by the Chief Minister. Consequent to that, the petitioner is kept under suspension pending enquiry.

MATERIAL FOR COUNTER AFFIDAVIT
TO PARA 31.

It is not true to say that the Minister, PWD, has prevailed on Government (which he probably means the Cabinet) under threat of resignation to issue the order of suspension. There is neither reason nor necessity for the Minister, PWD, to go through a threat of resignation.

MATERIAL FOR COUNTER AFFIDAVIT to para 27.

(1) It is not true to say:

(i) that Government has taken a perverse, vindictive and malafide attitude at the instance of PWD Minister;

(ii) that all sorts of charges are being levelled against him since the present PWD Minister assumed office; and

(iii) that the petitioner is being found fault with even in matters where he has affected considerable savings.

The petitioner's statement that he is found fault with even where he has effected considerable savings is something un-understandable. Probably, he is referring to the Bangalore water-supply scheme where his proposal was to have 30"pipe scheme at an estimated cost of Rs. 225 lakhs as against 36" pipe scheme costing Rs. 255 lakhs. This is a gross distortion of fact.

The Chief Engineer has never been consistent. He has gone on varying his figures and factors from time to time. He has also gone on changing the estimates and giving distorted versions. He is not tired of saying that the cost would be less with his scheme all the while comparing estimates got up for pumping different quantities of water. This was sufficiently pointed out to him and was asked to submit comparative statement of cost, the maximum available quantity of water viz., 10.58 MGD under the alternative proposal of 30" and 36" pipe. According to his own statement submitted to Government in his letter dated 18-8-1959, the scheme for pumping 10.93 MGD with 30"/27" costs Rs. 249.04 lakhs while that for 36" pipe for pumping more or less the same quantity viz., (10.84 MGD) is Rs. 247.69 lakhs. He has again submitted an estimate on - 13-9-1959 for Rs. 210 lakhs to pump.....MGD with 30"/27". He has again submitted on 3-8-1959 an estimate for Rs.200 lakhs with 30"/27" main to pump 7.7 MGD. He has also submitted an estimate for Rs. 240/- lakhs with 30"/27"main coupled with two stages pumping of 24" main to pump 9.7 MGD.

This

This is clearly indicative of the fact that he has never been firm on his own proposals as a technical adviser to Government. The points for consideration was to determine

(i) the maximum quantity of water that can be assured at Bangalore; and

(ii) the most economic size of the pipes to be used for the III main and not from what Company the pipes should be purchased.

(2) It is not true to say - that the petitioner was transferred from Sharavathy Valley project on caste prejudice.

The petitioner was transferred from Sharavathy on administrative grounds. The H.E.C.P. Board, responsible for the quick execution of the project was very much dis-satisfied with his work. He did not raise to the standards required to handle projects of that magnitude and Government was forced to transfer him in public interest. The proceedings of the H.E.C.P. Board which consists of a number of eminent Engineers not in Government service and others makes these points very clear. His performance was very poor and it was noticed in November 1958. He was told of slow progress, lack of drive and initiative. Again on January 13, 1959, the progress was reviewed. It was again found to be very bad. The Board viewed with concern his failure to take action and implement the decision of the Board. The petitioner was not able to satisfactorily answer the members of the Board on his failures. There was no hope left for the project.

Besides this, he was not able to take the administrative machinery under the control and enforce discipline. On the other hand, he positively contributed to develop a cleavage in the services. His continuance in the project was found to endanger the progress of the project and was therefore transferred in public interest.

The

The Government D.O.letter No. PA.443 dated 12-11-1959 conveying displeasure of Government on his work and the extract of the Confidential report by the P.W.D. Secretary will speak for themselves.

It is needless to point out how far the petitioner is prepared to go when he says that he was transferred from Sharavathy valley Project on caste prejudice forgetting all the while his own conduct, performance and omissions and commissions at Sharavathy. He also appears to forget that the person posted in his place is one belonging to his own community or that allied to it.

(3) It is not true to say that possitive encouragement is given to his subordinate to complain against the petitioner to Government.

The petitioner has averred that positive encouragement was given to his subordinate to complain against him to Government. Nothing can be more unreal than this. He is probably referred to a case where one S.E. has complained against the petitioner's conduct in mis-using his official power to discredit him. The petitioner is said to have found fault with the S.E. Raichur Circle and passed severe adverse remarks against him in his inspection notes. Instead of taking action according to rules, he is said to have sent copies of adverse remarks against the officer to all the Executive Engineers and Assistant Engineers working under him to the Divisional Commissioner, the Deputy Commissioner and the Tahasildars in the Revenue Department and the Municipal President of Shorapur. It may be mentioned here that it is this S.E. and the petitioner had come into conflict at Sharavathy and spoiled the administration there and were responsible for slackness in the progress of the project. Both of them had to be transferred out of the project simultaneously. The S.E. has submitted to Government that the petitioner has misused his powers as Chief Engineer to wreak vengeance against

against him because of his old prejudices by sending his adverse remarks against him to his subordinates and to the unconcerned officers of the Revenue Department and non-officials also. In the face of these facts, to say that Government have encouraged the S.E. to lodge a complaint against the petitioner on caste prejudice has to say the least no value.

~~[illegible]~~

(4) It is also not true to say that there was undignified and violent attitude on the part of the Minister when the petitioner met him in his chambers.

(5) It is also not true to say that the Minister PWD is determined to harm him and that he has systematically and relentlessly spell out charges against the petitioner for anything and everything and give a mischievous turn to even the best of things.

There is no reason for the P.W.D. Minister to systematically and relentlessly spell out charges against the petitioner and to give a mischievous turn even to the best of things as is averred and there is no reason for giving any threat whatsoever.

(6) It is not true to say that any threat was held out at the time of the meeting of the petitioner with the Minister for P.W.D.

(7) It is not true to say that the Minister insulted the petitioner by denying him Chief Engineer (General's) place and lowered his prestige:

There is no question of insulting him by not giving him the position of C.E.(General). His performance in Sharavathy and his capacity to maintain efficiency and discipline in the Department was bad and he was transferred from Sharavathy on that account. Such being the case, Government considered it improper to put him in charge of the entire establishment, and decided in favour of Shri K.M.Joshi. It is not correct to say that the Establishment should always be with the senior-most man. There have been cases when juniors have been put in charge of establishment. Sri Krishnaswamy Mudaliar was in charge of establishment although there were senior people serving as Chief Engineers. No such convention has been developed as averred.

It may be pointed out that all the above statements made by the petitioner are not merely false but deliberately concocted with a view to attract the jurisdiction of the High Court on grounds of mala fides. The Minister PWD., has no reason to have any prejudice against the petitioner and his caste in particular. If any action is taken, it is in the usual course of administration, and in consequence of omissions and commissions on the part of the petitioner.

Mysore Government
Secretariat

File No. of 196

[App. F. III 2

Serial No.

D. No. 662 (3) Law IV.

LAW DEPARTMENT

I have placed below extracts from the Writ Petition No.137 of 1961 filed against the State Government and the P.W.D. Minister. Detailed facts about the matter may kindly be supplied for preparing the counter-affidavit.

(T.K. Tukol)
Addl. Law Secretary.
(8-2-1961)

OFFICE OF THE CHIEF MINISTER
No. ....
8 FEB 1961
BANGALORE

Chief Minister)

Note.—Contn. Sheet

(1). On 3rd Jan 1961, the C.M. had a Cabinet meeting in the morning at 9 A.M. at the Office of Manager in the noon. On the 5th Jan, the C.M. Manager returned to the HQ on 11-1-1961 at 1 P.M.

(2) The same was late in the evening at about 10 P.M. during recession. After that we had a discussion regarding his work as C.S. since the D.D. Minister in-charge has left. I told him that I was trying to explain the matter regarding his Minister and he should not give to me misunderstand about the Minister-in-charge. I had a talk with Hon. Minister. I told him that I was the senior most officer in the service of the Govt. and I was trying to explain the matter regarding his Minister. I did not take the help of any case. I did not give the explanation to the Minister in-charge. He is not happy with the C.S. and also is unhappy with the C.S. or with any of my friends being the friend of the C.S.

Minister
12-1-1961

Extracts from the writ Petition No.137/1961
filed by Sri L. H. Hanchigiah

.....

10. Within a few hours after that incident I had an interview with the Chief Minister and apprised him of the threat held out and the harassment caused to me and explained my position. The Chief Minister who showed sympathy and regretted that all this was being caused by the P.W.D. Minister because of his not realising the legal implication. He however advised me to somehow manage with the Minister and to go on leave if necessary. I told the Chief Minister that I was not prepared to take leave under these humiliating circumstances and under threats.

13. * * * *

When the question of placing orders for purchase of 36" diameter pipes came up for consideration before the Cabinet and when the only firm that could supply the pipes was a Calcutta firm, the Chief Minister noted on the file that when Bhadravathi a State-owned concerne can supply pipes as per original Government order why place orders on private firm in Calcutta for pipes. I assumed office In March 1959, as Chief Engineer for Irrigation and Public Health and in July the Chief Secretary to Government showed me the note by the Chief Minister regarding the conflicting recommendations of my predecessor in office and wanted me to send up a definite recommendation on verified data.

* * * * *

It was also learnt that on the basis of my proposal for laying 30" pipes the Chief Minister had instructed the Bhadravathi Works to manufacture 30" pipes and pipes worth nearly 3 lakhs had already been manufactured by February 1960.

....

Chief Minister: (

sd/-
Addl. Law Secretary.

LAW DEPARTMENT

The Chief Minister has given the following information regarding the points raised in the different paragraphs of Writ Petition No.137 of 1961:

Paragraph 10: It is not a fact that the Officer saw the Chief Minister on 5th January 1961. The Chief Minister left Bangalore on 3rd January 1961 in the noon for Bhavanagar after finishing the Cabinet meeting in the morning. On the 5th January, the Chief Minister was at Bhavanagar and returned to Headquarters on 11-1-1961 at 1 P.M.

It is a fact that he saw the Chief Minister sometime before he left to Bhavanagar at about 10 P.M. at his residence. He told him that he could not carry on his work as Chief Engineer since the P.W.D. Minister has certain prejudices against him. The Chief Minister told him that it was upto him to explain and satisfy the P.W.D. Minister and that he should not have approached him and complained to him about the Minister unless it was in an appeal against any order passed by his Minister. The Chief Minister further told him that he was the seniormost Officer on the verge of retirement and that he should satisfy his Minister by explaining his case. It is not true that the Chief Minister asked him to go on leave. It is not true that he/ complained to the Chief Minister about the interview that the Officer had with the Chief Secretary or that any threat was given to him by the latter.

It is not a fact that the Chief Minister expressed any regret or that he told the Officer that the whole thing was caused by the P.W.D. Minister because of his not realising the legal implication.

Paragraph 13.

The allegations in paragraph 13 regarding the Chief Minister having placed orders with Bhadravati Iron Works are not true. It is not true to say that the Chief Minister noted on the file that as to why orders were being placed with a private firm in Calcutta for pipes when the State owned concern at Bhadravati could supply the pipes. It is not also correct to say that the Chief Minister instructed the Bhadravati Works to manufacture 30" pipes. What the Chief Minister noted on the file was that an enquiry should be made whether Bhadra Iron Works could manufacture 36" pipes when it was known that Bhadravati Iron Works is manufacturing only 30" pipes. The question of placing orders did not arise.